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Attorneys for Plaintiffs and the Putative Class

FILED
Superior Court of California
County of Los Angeles

FEB 14 2017

Sherri R. Carter, Executive Officer/Clerk
By Isabel Arellanes, Deputy
Isabel Arellanes

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

TAREE TRUONG, KHALED ALKOJAK,
OLGA GEORGIEVA, CYNTHIA MILLER,
and REBWAR JAFF on behalf of themselves
and all persons similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
Corporation, SCOOBEEZ, INC., a California
Corporation, ABT HOLDINGS, INC, an
Idaho Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. BC 598993

CLASS ACTION

**DECLARATION OF BETH A. ROSS IN
SUPPORT OF PLAINTIFFS' NOTICE OF
UNOPPOSED MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND
CONDITIONAL CLASS CERTIFICATION**

Action Filed: October 27, 2015

Trial Date: None

Date: March 7, 2017

Time: 11:00 AM

Dept: CCW- 311

Before: Hon. John S. Wiley, Jr.

DECL. OF BETH A. ROSS IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR PRELIM. APPROVAL
OF CLASS ACTION SETTLEMENT AND CONDITIONAL CLASS CERT.

Case No. BC 598993

1 I, Beth A. Ross, declare as follows:

2 1. I am an attorney at law licensed to practice law in the State of California. I am a
3 partner in the firm Leonard Carder, LLP located at 1330 Broadway, Suite 1450 Oakland, California
4 94612. I am admitted to practice in all California courts as well as all of the U.S. District Courts in
5 California, the Seventh and Ninth Circuit Courts of Appeals, and the United States Supreme Court.
6 I am the lead attorney for Plaintiffs Taree Truong, Khaled Alkojak, Olga Georgieva, Cynthia
7 Miller, and Rebwar Jaff ("Plaintiffs" or "Class Representatives") and the settlement class herein. I
8 make this declaration of personal knowledge, and if I am called as a witness I could and would
9 testify competently to the facts stated herein.

10 2. I submit this declaration in support of the plaintiffs unopposed motion for
11 preliminary approval of a class action settlement and conditional class certification of the claims
12 asserted in the Plaintiffs First Amended Complaint, filed January 27, 2016. All terms and details
13 of parties' class action settlement are memorialized in the Joint Stipulation of Class Action
14 Settlement and Release ("Settlement Agreement"), a true and correct copy of which is attached
15 hereto as Exhibit 1.¹ The proposed form of Notice to the Class is attached to the Settlement
16 Agreement as Exhibit A.

17 **BACKGROUND AND EXPERIENCE OF PLAINTIFF'S COUNSEL**

18 3. Leonard Carder, LLP ("LC") was founded nearly eighty (80) years ago and
19 specializes in labor and employment law. The firm – which now includes 29 attorneys – represents
20 clients throughout California and nationally, including labor unions, associated trust funds, and
21 employees in employment law class actions and other representative cases as well as single and
22 multi-plaintiff cases. LC has devoted a special focus to independent contractor misclassification
23 litigation over the last 25 years. Representative independent contractor litigation in which I and
24 other LC attorneys have served as lead class counsel have included, *inter alia*, *In Re FedEx Ground*
25 *Package Systems Employment Practices Litigation* (MDL Docket 1700, US District Court N.D.

26
27 ¹ As of this filing, the Settlement Agreement has been signed by counsel for all parties, four of the
28 five Named Plaintiffs, and Scoobeez/ABT Holdings, Inc. The signature of Amazon's
representative is forthcoming and the parties will supplement this filing. Plaintiffs' counsel is
working to locate the fifth Named Plaintiff, Olga Georgieva. If they are unsuccessful, they will file
an appropriate motion with the court to withdraw as her counsel.

1 Ind. No. 05-MD-527 RM-CN), *Alexander v. FedEx Ground Package Systems, Inc.*, 765 F.3d 981
2 (9th Cir. 2014) *Estrada v. FedEx Ground Packages Systems, Inc.*, 154 Cal.App.4th 1 (2007)
3 (package delivery drivers: IC misclassification/ LC 2802 statewide class action); *Vickery v. Cinema*
4 *Seven Inc. dba the Mitchell Brothers O'Farrell Theatre*, SF Superior Court, No. 959610 (1998)
5 (exotic dancers: IC misclassification/ LC 2802, minimum wage and overtime class action); *LaBrie*
6 *v. UPS Supply Chain Solutions*, U.S. District Court ND Cal., No. 08-CV-3182 PJH (2008)
7 (package delivery drivers: independent contractor misclassification/ FLSA collective action);
8 *Aguilar v Carey Limousine*, JAMS, No.100059356(2012) (2010). (limousine drivers: IC
9 misclassification/ LC 2802 and overtime multi-plaintiff arbitration); *Ardon v. 3PD, Inc.*, US
10 District Court C.D. Cal., No. ED CV13-01758-DTB (2013) (appliance delivery and installers: IC
11 misclassification/ LC 2802 and overtime PAGA collective action); *Narayan v. EGL, Inc.*, US
12 District Court ND Cal., No. C 05-4181 RMW (2005) (delivery drivers: IC misclassification/ LC
13 2802 and overtime class action); *Kairy v. SuperShuttle Int'l Inc.*, U.S. District Court N.D. Cal., No.
14 08-cv-2993-JSW (2008) (airport shuttle drivers; IC misclassification/ LC 2802, minimum wage/
15 overtime class action); *Ayala v. Antelope Valley Press*, Cal. Supreme Court, No. S206874 (2013)
16 (CELA amicus curiae – class certification standard in IC misclassification cases).

17 4. I am a 1988 graduate of the Boalt Hall School of Law at the University of California
18 where I was awarded a Robert Cowell Labor Law fellowship in 1987 and served as an articles
19 editor for the Industrial Relations and Labor Law Journal in 1988. I served as a law clerk to the
20 Honorable Lawrence K. Karlton of the United States District Court for the Eastern District of
21 California from 1988 to 1990. At the conclusion of my clerkship, I became an associate attorney
22 with LC and was named a partner in 1995. I have practiced exclusively in the areas of labor and
23 employment law with a special focus on class action litigation challenging independent contractor
24 misclassification schemes and wage and hour violations. I am an elected fellow in the College of
25 Labor and Employment Lawyers and I have been named a California Super Lawyer in each year
26 since 2009. I have served on the Board of Directors of the AFL-CIO Lawyers Coordinating
27 Committee, I am a member of the ABA Labor and Employment Law and Litigation Sections, and
28 was a chapter reviewer for the fifth edition of Lindemann/ Grossman treatise *Employment*

1 *Discrimination Law* published in 2012 (Ch. 42 – Attorneys’ Fees and Ch. 44 – Settlement). I am a
2 frequent invited speaker on wage and hour law and employment class action litigation for the ABA
3 Labor and Employment Section, the California State Bar Labor and Employment Section, the San
4 Francisco Bar Association, the California Employment Lawyers Association and other professional
5 conferences and meetings.

6 5. Elizabeth Gropman graduated from UC Hastings School of Law in 2013. Ms.
7 Gropman worked as a law clerk at the Legal Aid Center-Employment Law Center, Workers’
8 Rights Clinic, and served as the Executive Submissions Editor for the Hastings Women’s Law
9 Journal. Ms. Gropman represented workers in wage and hour and gender discrimination class
10 actions as an associate at Sanford Heisler, LLP prior to becoming an associate at LC. Some of the
11 wage and hour cases Ms. Gropman has worked on include *Alexander et al. v. FedEx Ground*
12 *Package System, Inc.*, supra,; *Martinez et al. v. Flowers Foods, Inc. et al.*, US District Court
13 Central District of California, Case No. 2:15-cv-5112 (class action challenging independent
14 contractor misclassification); *Soares et al. v. Flowers Foods Inc.*, US District Court Northern
15 District of California, Case No. 5:15-cv-04918-PSG (class action challenging independent
16 contractor misclassification); *Lopez et al. v. Aarons, Inc.*, Superior Court of the State of California
17 County of Alameda, Case No. RG15762207 (individual Labor Code claims challenging exempt
18 status),

19 LITIGATION BACKGROUND

20 6. On October 27, 2015, Plaintiffs filed this case and, on January 27, 2016, Plaintiffs
21 filed their First Amended Complaint. The gravamen of Plaintiffs’ Complaint² is that Scoobeez and
22 Amazon (collectively, “Defendants”) misclassified the Drivers as “independent contractors,” when
23 in fact they were employees entitled to the benefits and protections of California’s wage and hour
24 laws. On January 15, 2016, about three months after Plaintiffs filed this case, Scoobeez re-
25 classified the Drivers as W-2 employees. Because this change in Defendants’ business practice
26 capped their liability for the claims alleged to a time period of less than five months, the parties
27

28 ² “Complaint” as used herein refers to Plaintiffs’ First Amended Complaint, which is the operative complaint.

1 agreed to engage in early mediation. The parties engaged a nationally recognized mediator with
2 expertise in complex employment class actions, Michael Dickstein, Esq. and set a mediation date
3 of July 15, 2016. To prepare for mediation, the parties conducted comprehensive, albeit informal,
4 discovery regarding the class-wide damage claims asserted in the complaint.

5 7. Scoobeez provided Plaintiffs with an anonymized class list with approximately 460
6 Drivers and records of Drivers' hours worked. Scoobeez also provided comprehensive records
7 data showing compensation paid to the Drivers, their daily hours of work, and the tips earned
8 through October 1, 2015. Amazon provided electronic records additional tip information and also
9 routing data that showing the address of every completed delivery performed by each putative class
10 member during every day of work, as well as the sequence in which deliveries were made.
11 Plaintiffs' engaged a forensic accounting expert to use this data to project Defendant's potential
12 exposure on the claims in this action. Plaintiffs engaged a well-qualified forensic accountant and
13 damage expert to analyze this data and prepare a comprehensive damage model to enable us to
14 calculate the value each of the claims alleged in the case as the basis for developing a reasoned
15 settlement position.

16 8. The parties participated in an all-day, formal mediation on June 15, 2016. All five
17 Named Plaintiffs were in attendance. In advance of the mediation, the parties exchanged mediation
18 briefs explaining their positions. The parties reached a tentative class-wide settlement in principle
19 at the end of the day. Negotiations on many settlement terms took several more months, with the
20 parties executing the Settlement in early February 2016.

21 MAXIMUM LIABILITY ANALYSIS

22 9. Expense Reimbursement Claim (Labor Code §2802): Plaintiffs' analysis of
23 Defendants' exposure liability for failure to reimburse business expenses is based on a "mileage
24 reimbursement method." The California Supreme Court has expressly approved of the use of this
25 method to calculate vehicle-related expenses reimbursable under § 2802 "for work-required use of
26 an employee's own [vehicle]." *Gattuso*, 42 Cal.4th at 569. The Court explained that the "mileage
27 reimbursement method" entails multiplying "the number of miles driven to perform job duties . . .
28 by a predetermined amount that approximates the per-mile cost of working and operating [the

1 vehicle].” *Id.* Plaintiffs’ expert used a mapping formula to derive Drivers’ mileage from Amazon’s
2 routing data, which showed that putative class members drove a total of about 587,362 miles
3 during the liability period. Multiplied by the IRS rate of \$0.575, Plaintiffs’ calculated Defendants’
4 exposure for its failure to reimburse vehicle expenses – including statutory interest through July 15,
5 2016 – to be approximately \$399,544.

6 10. Unpaid Minimum and Overtime Wages (Labor Code §§ 512, 1182.12, 1194):

7 Plaintiffs calculated Defendants’ exposure for unpaid minimum and overtime wages using time
8 records produced by Scoobeez all Drivers for the entire liability period. Until October 31, 2015,
9 Scoobeez’s dispatchers recorded Drivers’ shifts and hours in daily spreadsheets; thereafter, the
10 Drivers’ scheduled shifts and recorded their hours Scoobeez’s scheduling software. Scoobeez
11 produced records for both time periods to Plaintiffs. Based on this data, Plaintiffs’ expert
12 determined each Drivers’ total hours worked, added 15 minutes of uncompensated time to each
13 shift worked by a Driver, and then assessed overtime and double-time hours by identifying all
14 hours worked over 8 or 12 in a day, and over 40 in a week.

15 11. Plaintiffs calculated Drivers’ “regular rate of pay” pursuant to the DLSE
16 Enforcement Manual’s guidelines, relying on the hourly rates that Scoobeez paid to the Drivers as
17 shown in the data produced. DLSE Enforcement Manual, ¶ 49.1.2 (quoting 29 U.S.C. § 207(e))
18 (“regular rate of pay” based on “all remuneration for employment paid to, or on behalf of, the
19 employee[.]” including piece-rate and production-based compensation and bonuses). The Drivers’
20 tips were not included in the regular rate calculation. Despite the short four-and-a-half month
21 liability period, Scoobeez compensated the Drivers pursuant to five different schemes. The
22 calculation of the regular rate varies accordingly:

- 23 • August 2015 through September 15, 2016 (“Training Period”): Drivers were paid
24 hourly, \$2.50 per drop, and \$25 “bonus” per day. The drop rate and bonus are
25 included in the Drivers’ “regular rate of pay” during the period pursuant to the
26 DLSE guidelines.
- 27 • September 16-30, 2015: Drivers were paid hourly, plus \$2.50 per drop. The drop
28 rate is included in the Drivers’ “regular rate of pay.”

- 1 • October 1 – November 31, 2015: Drivers were paid hourly, plus tips. The tips were
2 not included in the “regular rate of pay.”³
- 3 • December 1-31, 2015: Drivers were paid hourly, plus tips. During this month,
4 Scoobeez auto-deducted 30 minutes from each shift worked by a Driver; for the
5 purposes of this exposure analysis, Plaintiffs added 30 minutes of uncompensated
6 time to each shift worked by a Driver in December 2015.
- 7 • January 1-15, 2015: Drivers were paid hourly, plus tips.

8 Plaintiffs’ expert calculated that Drivers worked a total of about 4,283 off-the-clock hours, 20,015
9 overtime hours, and 545 double-time hours during the class period. Plaintiffs estimate that
10 Defendants’ exposure for unpaid wages and overtime premiums – including interest calculated
11 through July 15, 2016 – is approximately \$219,994.

12 12. Meal Period Claim (Labor Code §§ 226.7, 512): Plaintiffs’ expert calculated
13 Defendants maximum exposure for missed meal periods by assuming that each Driver missed a
14 meal period on every day of work shown Scoobeez records, and that each was entitled to one
15 additional hour of pay at the contractual wage rate. Based on these assumptions, Plaintiffs
16 estimated Defendant’s exposure for missed meal period premiums – including interest calculated
17 through July 15, 2016 – to be approximately \$199,513.84.

18 13. Itemized Paystub Claim (Labor Code §226): Plaintiffs calculated penalties pursuant
19 to § 226 per class member, per bi-monthly pay period. Collectively, Defendants’ exposure for
20 failure to provide itemized pay statements is \$213,450

21 14. Tips: Scoobeez does not dispute that it did not distribute any tips earned by the
22 Drivers until October 1, 2015 but contended it was not obligated to remit those tips to the drivers.
23 The amount of the unremitted tips shown in Defendants’ records is \$15,652.65.

24 15. Waiting Time Penalties (Labor Code §§ 201-203): Plaintiffs expert calculated
25 Defendants’ exposure for waiting time penalties by assuming that each Driver whose employment

26 ³ Scoobeez records indicated that during November 2015, at least some Drivers were paid based
27 on scheduled hours, instead of actual hours, but the class-wide data initially provided by Scoobeez
28 only contains actual hours. Scoobeez only produced scheduled hours for November on July 16,
2016. Plaintiffs’ expert calculated overtime and double-time for November based on the actual
hours shown in the data.

1 with Scoobeez ended during the four month period would have been entitled to payment of an
2 additional 30 days' wages as a result of the alleged independent contractor misclassification and
3 the unpaid wages that remained due and owing to them at the end of their employment. Plaintiffs
4 calculated that Defendants' exposure for waiting time penalties will be approximately \$690,952.

5 16. PAGA Penalties: Plaintiffs have calculated Defendants' maximum aggregate
6 exposure for discretionary PAGA penalties to equal approximately \$3,847,650, including stacked
7 penalties for unreimbursed expenses (\$306,600), unpaid overtime premiums (\$165,850), unpaid
8 wages for off-the-clock work (\$522,750), failure to remit tips (\$74,400), waiting time penalties
9 (\$23,300), failure to keep accurate payroll records (\$232,500) and willful misclassification
10 pursuant to Labor Code § 226.8 (\$2,325,000). These calculations were performed using the
11 maximum possible penalties permissible under Labor Code §2699 for initial and subsequent
12 violations of the referenced statutes.

13 17. The maximum exposure for all claims as calculated by our expert is summarized as
14 follows:

15 **Wages and Expenses**

Expense Reimbursement	\$ 399,544.00
Unpaid Minimum Wages and	
Overtime Compensation	\$ 219,994.00
Meal Period Premiums	\$ 199,513.00
Tips	\$ 15,652.65

19 **Statutory Penalties**

Paystub Claim Penalties	\$ 213,450.00
Waiting Time Penalties	\$ 690,952.00
PAGA Penalties	\$ 3,847,650.00

<i>Total Maximum Exposure</i>	<i>\$ 5,586,755.65</i>
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24 18. Excluding the discretionary waiting time and PAGA penalties, Plaintiffs' Counsel's
25 best estimate of Defendants' exposure for the unpaid wages, meal and rest period compensation,
26 unreimbursed expenses, and penalties for violations of Labor Code §226 through January 15, 2016
27 was approximately \$ 1,048,153.65, excluding PAGA and other statutory penalties, and attorneys'
28 fees and costs.

1 RISK ANALYSIS

2 19. The reasonableness of the Settlement is underscored by the fact that Defendants
3 have several legal and factual grounds to challenge class certification, the merits, and damages in
4 this action. Absent settlement, Plaintiffs would have to conduct discovery for, and obtain, class
5 certification; establish class-wide liability; and then prove up various complex issues regarding
6 damages. Such efforts would likely take several years, and necessitate expert witness testimony, as
7 well as other costs, risks, and potential delays. Appellate risks could further delay and jeopardize
8 recovery. By contrast, the Settlement ensures timely relief and substantial recovery of the wages
9 and expenses that Plaintiffs contend are owed to the Settlement Class.

10 20. Class Certification: Initially, Defendants would vigorously dispute class
11 certification, claiming that individual issues would predominate should this case proceed to trial.
12 Specifically, Defendants would assert that class certification is not appropriate by asserting: (1)
13 there were variances between the different locations throughout the California in how the work is
14 performed and how Class Members were compensated; (2) liability on the minimum wage and
15 overtime claims would require discovery and evidence regarding each and every employee's time
16 records and trial testimony regarding when s/he reported to work and left work each day, and the
17 reasons for the hours worked; (3) whether Defendants' are liable for reporting time pay would be
18 dependent on each worker's differing circumstances and schedules; (4) that unreimbursed expenses
19 would require individualized discovery and evidence regarding and every employee's expenses
20 incurred; (5) that Plaintiffs' meal claims would require individualized discovery and evidence
21 regarding each and every employee's circumstances and schedules; and (6) that the Named
22 Plaintiffs are not representative of the Class because they worked out of a single location. While
23 Plaintiffs disagree with Defendants and believe that each of the claims would have been
24 successfully tried on a class-wide basis through representative testimony from Drivers,
25 management and Defendants' employees' testimony, statistical sampling and expert testimony, and
26 company documents, they recognize that such procedures raise difficult management and proof
27 issues. Accordingly, there is a risk that the Court may have denied class certification or, if it
28

1 initially certified the class, later decertified it if the trial procedures appeared to become
2 unmanageable.

3 21. Employment Status: As to the threshold issue of employment status, Defendants
4 also dispute that they had an employment relationship with the Drivers. Their position is that they
5 did not have the right to control the Drivers' work and manner of work. *See S.G. Borello & Sons,*
6 *Inc. v. Dep't of Indus. Relations* (1989) 48 Cal. 3d 341, 350. Defendants would argue that Drivers
7 were properly classified as independent contractors because they assert, for example, that Drivers
8 (1) selected their shifts and had no obligation to sign up for shifts at all; (2) could reject proposed
9 work assignments; (3) used their personal vehicles to perform deliveries; (4) were not obligated to
10 wear Scoobeez or Amazon "branding" personally or on their vehicles; (5) could perform services
11 for other companies; (6) could perform their work with minimal training; and (6) signed
12 independent contractor agreements and therefore believed they were creating an independent
13 contractor relationship with Scoobeez. Plaintiffs believe that they would be able to prove
14 employment status, but recognize there is a risk that the Court may have found the Drivers were
15 correctly classified as independent contractors.

16 22. Joint Employer: Amazon would also argue that it should not be held liable to the
17 Drivers as a joint employer. Amazon maintains that it did not "exercise control over wages, hours,
18 or working conditions" and as such cannot be held to be a joint employer with the third-party
19 contracting company, Scoobeez. *See Martinez*, 49 Cal. 4th 35 (three alternative tests for who is an
20 "employer" for purposes of California wage and hour laws). In the alternative, Plaintiffs assert that
21 Amazon was a "client employer" of Scoobeez under the Labor Code § 2810.3; Amazon also
22 disputes that it would be liable as a "client employer" and Plaintiffs recognize that there is risk as
23 section 2810.3 is relatively new and untested in the courts. Moreover, if Amazon was found to be
24 a "client employer" only (as opposed to a "joint employer" under *Martinez* or *Borello*), its liability
25 would be limited to unpaid wages, but not unreimbursed expenses and other non-wage claims.

26 23. Plaintiffs were concerned that Scoobeez/ABT alone would not be capable of
27 satisfying a judgment for a number of reasons, including that Scoobeez is a start-up company in a
28 relatively new sector of the economy without a proven track record of solid financial performance.

1 24. Liability on Wage and Hour Claims: Plaintiffs and their counsel also recognize that
2 there is a risk on the merits of their claims, as there would likely be disputes over several legal and
3 factual issues. Defendants would argue, under *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th
4 554 (2007), that it had reimbursed Drivers for their daily business expenses because Defendants
5 assert that Drivers' compensation was sufficient to reimburse them for mileage and any other
6 expenses. Other merits disputes attach to other causes of action. For example, Defendants would
7 have disputed liability as to: (1) the minimum wage and reporting time claims based on
8 Defendants' position that Drivers were paid a rate that exceeded minimum wage and were never
9 required to perform work without being paid; (2) the claim for waiting time penalties based on
10 Defendants' position that they had a "good faith" belief that no additional wages were due; (3) the
11 meal period claims based on Defendants' position that Drivers were free to take meal periods at
12 their leisure; and (4) the itemized wage statement claims based on the argument that the Drivers did
13 not suffer injury as a result of the wage statements' deficiencies.

14 25. Finally, Plaintiffs would need to prove up damages. Defendants' position is that
15 Plaintiffs would be unable to support their current damages estimates and that any award by this
16 Court or a jury would only be a fraction of the potential exposure calculated by Plaintiffs for the
17 claims.

18 26. PAGA Penalties: With regard to Plaintiffs' PAGA claim, Defendants will ask the
19 Court to exercise its discretion to award, at most, a fraction of the PAGA penalties Plaintiffs seek
20 because the full measure would be "unjust, arbitrary and oppressive, or confiscatory." Cal. Lab.
21 Code § 2699. In particular, a Court may be inclined to exercise its discretion to minimize an award
22 of PAGA penalties because of the short liability period here and the fact that the Drivers were
23 reclassified as W-2 employees within five months after they began operations in California and suit
24 was filed. Plaintiffs have weighed the risk that these arguments could be adopted by the Court in
25 whole or in part in assessing the settlement value of the class claims. While it is unlikely that
26 Plaintiffs would recover nothing under PAGA, whether the Court would exercise its discretion to
27 award them the maximum amount of the statutory penalties they seek – approaching \$4 million – is
28 entirely uncertain.

1 27. Defendants, represented by attorneys from law firms experienced in class actions
2 and wage and hour cases, would undoubtedly have raised all of the above arguments and more in
3 continued litigation. Despite Plaintiffs' confidence in their ability to prove all of the claims on a
4 class-wide basis, any one of the above defenses, if decided in favor of Defendants, could have
5 reduced or even eliminated any potential award to the Class.

6 **FAIRNESS AND ADEQUACY OF THE PROPOSED SETTLEMENT**

7 28. The negotiation process, both during the mediation session and afterwards, has been
8 serious and at all times at arm's-length. The discussions were based on both sides' understanding
9 of the legal hurdles facing them if litigation were to continue, and in light of all of the facts and
10 circumstances present in the matter. Prior to reaching the settlement, Class Counsel thoroughly
11 evaluated the strengths and weaknesses of Plaintiffs' and Class Members' claims. This included
12 consideration of Defendants' arguments as to the merits and the availability of defenses to class
13 treatment and its financial ability to continue the litigation, pay any potential verdict, or file
14 bankruptcy. Class Counsel relied on the information produced during the discovery exchange
15 described above, and other investigation into Plaintiffs' claims when assessing the value of this
16 case, as well as our collective experience handling employment and wage and hour matters.
17 Ultimately, the Parties agreed that the risks inherent in continued litigation, as well as the
18 arguments by either side, justified the settlement achieved.

19 29. The Settlement results in a substantial benefit to all Class Members: \$720,000.00
20 represents 91% of Plaintiffs' Counsel's best estimates of the maximum verdict value of the Class'
21 potential recovery of all owed wages and expenses, a potential recovery that assumed all factual
22 and legal disputes would be resolved in Plaintiffs' favor and they would obtain the full value of
23 their claimed damages. Alternatively, it represents approximately 72% of all owed wages and
24 expenses, as well as penalties for failure to provide accurate wage statements, *i.e.* excluding PAGA
25 and waiting time penalties. It represents 12% of Plaintiffs' Counsel's best estimate of the
26 maximum verdict value of the Class' potential recovery on all substantive claims including 100%
27 of the discretionary penalties that could possibly be awarded, including PAGA penalties stacked
28 for each underlying claim.

1 30. A Net Settlement Fund of \$471,500 will be available to the Class Members who do
2 not opt out, after deductions for settlement administration costs, the named plaintiffs service
3 awards, attorneys fees' and litigation expenses, and payment of proceeds to the California Labor
4 and Workforce Development Agency as follows:

5

6 Gross Settlement Fund	\$720,000.00
7 Less Administrative Costs	\$10,000.00
8 Less Plaintiffs' Service Awards	\$7,500.00
9 Less Attorneys' Fees and Costs	\$216,000.00
Less PAGA Payment to LWDA	\$15,000.00
10 Net Settlement Fund	\$471,500.00

11

12 31. The distribution formula for calculating each class members' settlement share will
13 be based on a *pro rata* share of our calculation of the full wages and expenses to the Class, derived
14 from the records of hours worked and routed mileage produced by Defendants. Counsel have
15 agreed on this distribution formula (as opposed to, for example, distribution by weeks worked) to
16 most fairly compensate Class Members as their hours worked and routed miles may vary within a
17 given week. The average *net* payout to Settlement Class Members will be approximately
18 \$1,016.00 which Plaintiff estimate represents about 60% of the maximum verdict value of wages
19 and expenses calculated after deductions for attorneys' fees and costs, incentive awards and
20 settlement administration expenses. These are eminently reasonable amounts given the difficulty
21 of the claims, the degree of risk, and certainty of delay involved in further litigation as explained
22 herein and in the Plaintiffs' attorneys' declarations.

23 32. It is my professional opinion, based on my experience as an employment and wage
24 and hour litigator, and in particular with my experience in litigating a number of other similar
25 cases, and based on my own independent investigation and evaluation and consultation with
26 Plaintiffs, my law firm colleagues and co-counsel, that the proposed settlement addresses all of the
27 allegations of violations of the Labor Code by Defendants, and provides adequate monetary relief
28 to Plaintiffs and Class Members. I have assessed the risks and inherent delays if we were to

1 continue with the litigation and believe that the settlement is fair, reasonable, and adequate in light
2 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
3 Defendants, Defendants' financial condition, and uncertainties regarding class certification,
4 liability, and the amount of damages that might be recovered.

5 **ATTORNEYS' LODESTAR HOURS AND LITIGATION COSTS TO DATE**

6 33. The LC attorneys and paralegal staff have kept track of hours spent on this case
7 using Timeslips Remote attorney billing software. All billers on this case enter and record their
8 own time as incurred, which contemporaneously records the time worked on this case. For each
9 task performed on this case, the biller accounts for his or her time in 1/10th of an hour (6-minute)
10 increments and includes a brief narrative description of the work performed. Ms. Gropman and I
11 exercised billing judgment in this matter by not having the attorneys and staff bill for clerical tasks
12 and non-productive work. For example, many brief telephone conversations and e-mail exchanges
13 that were not accounted for under our typical billing habits. Each time entry was for a specific task
14 performed by the timekeeper, recorded in 1/10th of an hour (6-minute) increments; we did not use
15 "block billing" for entire days or other lengthy periods of time.

16 34. I had our staff generate a report summarizing each time-keepers' time spent on this
17 case through February 10, 2017 for each task-code which is attached as Exhibit 2 to this
18 declaration. We expect to spend additional time on this matter after February 10, 2017 and prior to
19 conclusion, including time already spent finalizing the settlement agreement and preparing these
20 papers, in addition to anticipated time preparing for and appearing at the hearing on this motion,
21 implementing this Court's order, monitoring the notice/ claim filing/opt-out/objection process and
22 corresponding with the settlement administrator throughout, completing the final approval process,
23 attending the final approval hearing, monitoring payout to Class Members, responding to questions
24 and concerns of Class Members and the Settlement Administrator, submitting any final accounting
25 required by the Court, and assuring the proper approval and distribution of any residue.

26 Accordingly, I expect the total lodestar from my firm and my co-counsel's firm to increase further.

27 35. I have also gathered a summary of litigation costs and expenses incurred by Leonard
28 Carder in this case through February 10, 2017 is included in Exhibit 2 to this declaration. This

1 summary shows total litigation expenses of \$24,773.65. I anticipate my firm will incur
2 approximately \$5,500.00 in additional costs to compensate our damages expert to complete the
3 damage calculations, as well as travel expenses, filing fees and other miscellaneous expenses
4 through final approval.

5 36. The lodestar value of the Leonard Carder firm's aggregate time is also included in
6 Exhibit 2. I used the 2016 market rates for both Ms. Gropman and me in calculating the lodestar.
7 These billing rates are the same ones Leonard Carder uses in all contingent fee litigation, and
8 submitted to opposing parties and courts where payment is sought by way of settlement or judicial
9 award.

10 37. The firm's lodestar through February 10, 2017 is therefore \$289,812.50.

11 **SERVICES PROVIDED BY NAMED PLAINTIFFS**

12 38. My firm has represented Plaintiffs since September 2015. All five Plaintiffs
13 represented by my firm have actively participated in this litigation, spending time participating in
14 interviews, meetings, and telephone consultations with Class Counsel who required considerable
15 information pertaining to Defendants' policies and procedures. All five Plaintiffs located and
16 produced documents, and prepared for and participated in the formal mediation, and missed work
17 to do so. This work was undertaken in order to prepare the original and First Amended Complaint;
18 to provide informal discovery; to prepare for mediation; and generally prosecute this case.

19 39. Each of the Named Plaintiffs faced and continue to face substantial risk in the
20 workplace because their current (and prospective future) employers will likely learn about their
21 participation in this litigation and take adverse action in response. Plaintiffs' willingness to
22 sacrifice and set aside their own personal interests for the benefit of the Class should be rewarded,
23 both as just compensation for their efforts and achievements in this Action, and to encourage others
24 to stand up and object to employment practices they believe to be unlawful. One of the Plaintiffs –
25 Rebwar Jaff – continues to be employed by Scoobeez and remains exposed them to addition risk of
26 retaliation by current and future employers.

27 40. In my experience as a litigator representing workers, the potential financial risks are,
28 in and of themselves, enough to dissuade many if not most people from agreeing to act as a class

1 representative. Plaintiffs additionally took the risk that this lawsuit would have a negative impact
2 on their current and future employment opportunities – for example, running the risk that his
3 prospective employers may run a background search, including a search for court records that
4 might reveal this lawsuit and his willingness to file suit against his employer.

5 41. Plaintiffs sacrificed their personal interests for the benefit of the Class. By agreeing
6 to file this Action, they assumed the risk of a judgment against them and potential personal liability
7 for an award of costs to Defendants in the event of an adverse outcome. In class action losses, the
8 class representative may be deemed the losing party and thus potentially liable for the prevailing
9 party's costs. *Earley*, 79 Cal. App. 4th at 1433-34; *Whiteway v. Fedex Kinkos Office & Print*
10 *Servs., Inc.*, No. C 05-2320, 2007 WL 4531783, at *1 (N.D. Cal. Dec. 17, 2007) (awarding \$56,788
11 in defense costs against the named plaintiff after granting motion for summary judgment)("All
12 potential litigants must weigh costs of suit against likelihood of success and potential recovery
13 before deciding to file suit. Those who choose to take the risks of litigation should be the ones to
14 bear the costs when they are unsuccessful.")

15 42. While class representatives are potentially personally liable for all of the costs in an
16 unsuccessful suit, they do not reap all of the benefits in a successful one. Accordingly, a fair
17 service fee is necessary to ensure that successful class representatives receives just compensation
18 for their willingness to take on the full risks of a loss.

19 **CONTINGENT RISK AND UNCERTAINTIES OF THE CASE**

20 43. LC took this case on a contingency fee basis. We did not charge plaintiffs or class
21 members any fees for the successful litigation and settlement of this case. As such, we rely on
22 awards for attorneys' fees and costs in order to continue our work for the enforcement of minimum
23 labor standards. We also incurred the litigation expenses and invested the attorney and staff time
24 described above, all of which required significant outlay by the firm. During the course of this
25 litigation, LC also turned away requests by other prospective clients and co-counsel to bring other
26 cases with merit, in part to ensure that we could adequately and successfully represent the class in
27 this matter and my firm's other pending litigation.

28 ///

1 44. Like most important and complex employment class actions, this case carried a risk
2 of no recovery at all for either the class or class counsel. While some of these risks of these types
3 of cases are known at the outset of a case, many develop over the course of time due to changes or
4 developments in the law, new appellate opinions, actions by defendants or defense counsel, court
5 rulings on certification or other motions, or other events that often cannot be predicted at the time
6 we commit to litigation. Even in cases where plaintiffs prevail on motion work or at trial, appellate
7 risk and delay further jeopardize the chance of meaningful recovery for the class. I have been
8 involved in several cases that are currently pending, or have been delayed for years, in the courts of
9 appeal – both state and federal; LC has also litigated cases where the class obtains nominal or no
10 recovery despite, in my professional opinion, meritorious claims.

11 45. In light of the meaningful recovery made for the class, reflecting the expertise of
12 class counsel, and the net recovery that class members will enjoy assuming the court approves the
13 requested award of fees, the risk incurred, time and cost expended, and alternate work declined, in it
14 is my professional opinion that the requested fee award is also fair to the class.

15 **REQUEST FOR APPOINTMENT OF SETTLEMENT ADMINISTRATOR**

16 46. Plaintiffs' Counsel requests that the Court appoint Simpluris, Inc. ("Simpluris"), of
17 Santa Ana, California, as Settlement Administrator to administer the mailing of class notice and to
18 administer various components of the proposed settlement as set forth in the Settlement Agreement
19 (e.g., calculating claim shares, processing claims and opt outs, drafting and mailing checks, etc.).
20 Based on Plaintiffs' Counsel's familiarity with Simpluris's work handling class notices and
21 administering class notices, settlements and claims processes in other cases, Plaintiffs' Counsel
22 believes that Simpluris is highly qualified to serve as Settlement Administrator in this case.

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1 Simpluris's estimate for the work to be performed is approximately \$ 10,000.00 with this amount
2 capped if the scope of the projected work does not materially change. Costs may be higher if the
3 Settlement Administrator assumes additional responsibilities beyond those contemplated by
4 counsel's description of the work.

5 I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct. Executed on February 14, 2017, at Oakland, California.

7 

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9 Beth A. Ross

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EXHIBIT 1

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Aaron Kaufmann, SBN 148580
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[Additional Counsel on next page]

IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

TAREE TRUONG, KHALED ALKOJAK,
OLGA GEORGIEVA, CYNTHIA MILLER,
and REBWAR JAFF on behalf of themselves
and all persons similarly situated,

Plaintiffs,

v.

AMAZON.COM, INC., a Delaware
Corporation, SCOOBEEZ, INC., a California
Corporation, ABT HOLDINGS, INC, an
Idaho Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. BC 598993

CLASS ACTION

**STIPULATION FOR CLASS ACTION
SETTLEMENT**

Action Filed: October 27, 2015

Trial Date: None

Date: March 7, 2017

Time: 11:00 AM

Dept: CCW- 311 – The Honorable John S.
Wiley, Jr.

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Attorneys for Defendants
Scoobeez, Inc., a California Corporation and
ABT Holdings, Inc.

1 This Stipulation of Class Action Settlement ("SETTLEMENT") is entered into between
2 Plaintiffs Taree Truong, Khaled Alkojak, Olga Georgieva, Cynthia Miller, and Rebwar Jaff, as
3 representatives of the plaintiff class described herein, on the one hand, and Defendants
4 Amazon.com, Inc. ("AMAZON"),¹ Scoobeez, Inc. ("SCOOBEEZ"), and ABT Holdings, Inc.
5 ("ABT"), (collectively, "DEFENDANTS"). The CLASS REPRESENTATIVES and
6 DEFENDANTS are hereinafter collectively referred to as "the PARTIES":

7 **I. DEFINITIONS**

8 The following capitalized terms, when used in this Stipulation, shall have the following
9 meanings:

10 1. CLAIMS PERIOD DEADLINE shall be the date sixty (60) days after the
11 Settlement Documents are initially mailed to the CLASS MEMBERS by the SETTLEMENT
12 ADMINISTRATOR.

13 2. CLASS means all persons who provided services as Delivery Drivers
14 pursuant to a contract between Scoobeez/ABT and Amazon to deliver goods to Amazon customers
15 in the State of California and who were classified as "independent contractors" during the period
16 commencing on or about August 1, 2015 through January 15, 2016.

17 3. CLASS COUNSEL means, collectively, the law firm of LEONARD
18 CARDER LLP, and its attorneys, which warrant and represent that no other law firms or attorneys
19 are serving in any capacity as "Class Counsel."

20 4. CLASS MEMBER means an individual who is a member of the CLASS as
21 defined above.

22 5. CLASS REPRESENTATIVES means Taree Truong, Khaled Alkojak, Olga
23 Georgieva, Cynthia Miller, and Rebwar Jaff.

24 6. CLASS REPRESENTATIVES' RELEASED CLAIMS shall mean any and
25

26 ¹ The corporate entity that was provided delivery services by Scoobeez was Amazon Logistics, Inc. All references to
27 AMAZON include Amazon Logistics, Inc.

1 all claims, obligations, demands, actions, rights, causes of action, and liabilities against the
2 RELEASEES, of whatever kind and nature, character, and description, whether in law or equity,
3 whether sounding in tort, contract, federal, state and/or local law, statute, ordinance, regulation,
4 common law, or other source of law or contract, whether known or unknown, and whether
5 anticipated or unanticipated, arising from or relating to a CLASS REPRESENTATIVES'
6 relationship, or termination of relationship, with any Defendant or other RELEASEE, as a delivery
7 driver during the period from August 1, 2015, through January 15, 2016, for any type of relief,
8 including, without limitation, claims for minimum or overtime wages, premium pay, business
9 expenses, other damages, penalties (including, but not limited to, waiting time penalties),
10 liquidated damages, punitive damages, interest, attorneys' fees, LITIGATION and other costs,
11 expenses, restitution, and equitable and declaratory relief. The CLASS REPRESENTATIVES'
12 RELEASED CLAIMS include, but are not limited to, the RELEASED CLAIMS as to CLASS
13 MEMBERS, as well as any other claims under any provision of the FLSA, the California Labor
14 Code, including PAGA (Labor Code section 2698, *et seq.*), the California Civil Code, any
15 applicable California Industrial Welfare Commission Wage Order, or any city or county ordinance,
16 and claims under any other state or federal laws, including, without limitation, the California Fair
17 Employment and Housing Act; the Unruh Civil Rights Act; the California Constitution; the
18 California Business and Professions Code; Title VII of the Civil Rights Act of 1964; the Family
19 and Medical Leave Act; the Americans with Disabilities Act; the Fair Credit Reporting Act; the
20 Employee Retirement Income Security Act of 1974; and all of their implementing regulations and
21 interpretive guidelines.

22 7. COMPLAINT refers to the First Amended Complaint, filed in this action on
23 February 2, 2016 in the Superior Court for the County of Los Angeles.

24 8. EFFECTIVE DATE means the date on which the Judgment becomes a
25 FINAL JUDGMENT.

26 9. ENHANCEMENT AWARDS means an amount approved by the Court to be
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1 paid to the CLASS REPRESENTATIVES as set forth in Section VII, in recognition of their efforts
2 in coming forward as a CLASS REPRESENTATIVES or otherwise benefiting the CLASS, and in
3 consideration of their agreement to the CLASS REPRESENTATIVES' Release.

4 10. FINAL APPROVAL HEARING means a hearing set by the Court, for the
5 purpose of (i) finally determining the fairness, adequacy, and reasonableness of this
6 STIPULATION and the associated SETTLEMENT pursuant to class action procedures and
7 requirements; (ii) determining the good faith of this STIPULATION and associated
8 SETTLEMENT; (iii) determining CLASS COUNSEL's attorneys' fees and LITIGATION costs;
9 (iv) determining the payment of ENHANCEMENT AWARDS to the CLASS
10 REPRESENTATIVES (or other SETTLEMENT CLASS MEMBERS agreed upon by the Settling
11 Parties); (v) addressing any objections to the SETTLEMENT; and (vi) entering an ORDER OF
12 FINAL APPROVAL and Judgment.

13 11. FINAL JUDGMENT means the latest of: (1) thirty (30) days from the date
14 the Court enters FINAL APPROVAL of the SETTLEMENT, if no objections by CLASS
15 MEMBERS have been filed, or if filed have been withdrawn; or (2) if an appeal is filed, the date an
16 Order is entered affirming the Court's ORDER OF FINAL APPROVAL. Notwithstanding the
17 foregoing, any proceeding or order, or any appeal or petition for a writ pertaining solely to the
18 award of attorneys' fees, attorneys' costs, and/or Administrative Costs shall not in any way delay
19 or preclude the Judgment from becoming a FINAL JUDGMENT.

20 12. FLSA means the Fair Labor Standards Act.

21 13. INDIVIDUAL SETTLEMENT PAYMENT shall mean the portion of the
22 NET SETTLEMENT FUND allocated and distributable to each CLASS MEMBER. OPT-OUTS
23 are not eligible to receive an INDIVIDUAL SETTLEMENT PAYMENT under this
24 STIPULATION.

25 14. LITIGATION refers to the lawsuit filed by Plaintiffs against Defendants,
26 entitled *Truong, et al. v. Amazon.com, Inc., Scoobeez, Inc. and ABT Holdings, Inc.*, on October 27,

2015 in the Superior Court for the County of Los Angeles, Case No. BC598993.

15. LWDA means Labor and Workforce Development Agency.

16. NET SETTLEMENT FUND shall mean the SETTLEMENT PAYMENT less CLASS COUNSEL's attorneys' fees and costs, payment to the LWDA, Administrative Costs, and the CLASS REPRESENTATIVES' ENHANCEMENT AWARDS.

17. NOTICE OF SETTLEMENT, NOTICE REGARDING PENDENCY OF CLASS ACTION or CLASS NOTICE shall mean the document attached hereto as Exhibit A.

18. NOTICE MAILING DATE shall be the date on which the SETTLEMENT ADMINISTRATOR initially mails the Settlement Documents to the CLASS MEMBERS, as set forth in Section VIII(G) below.

19. NOTICE RESPONSE DEADLINE shall be the date sixty (60) calendar days after the NOTICE MAILING DATE.

20. OPT-OUT(S) means any CLASS MEMBER(S) who timely submit an Exclusion Request pursuant to the procedures set forth herein.

21. ORDER OF FINAL APPROVAL or FINAL APPROVAL shall mean an Order to be entered and filed by the Court granting Final Approval of this STIPULATION, a proposed Order of which shall be submitted to the Court for review and approval.

22. PAGA means the California Private Attorneys General Act.

23. PRELIMINARY APPROVAL DATE means the date that the Court enters the PRELIMINARY APPROVAL ORDER preliminarily approving this STIPULATION and approving the sending of CLASS NOTICE.

24. PRELIMINARY APPROVAL HEARING means the Court hearing to consider the preliminary approval of the terms of this STIPULATION, including the sending of CLASS NOTICE.

25. PRELIMINARY APPROVAL ORDER means the Order of the Court preliminarily approving the terms of this STIPULATION, including the conditional certification,

1 for settlement purposes only, of a class action and approving the establishment of, and the
2 continuing jurisdiction over, the Qualified Settlement Fund.

3 26. QSF means "Qualified Settlement Fund." Qualified Settlement Fund means
4 the account established by the SETTLEMENT ADMINISTRATOR which the Parties agree will at
5 all times be treated as a "qualified settlement fund" within the meaning of Treas. Reg. §1.468B-1,
6 et. seq. The Parties agree the SETTLEMENT ADMINISTRATOR shall, in establishing the
7 account, make any such elections as necessary or advisable to carry out the "relation back election"
8 (as defined in Treas. Reg. §1.468B-1(j)(2)(i)) back to the earliest permitted date. Such elections
9 shall be made in compliance with the procedures and requirements contained in such regulations.
10 It shall be the responsibility of the SETTLEMENT ADMINISTRATOR to timely and properly
11 prepare and deliver the necessary documentation for signature by all necessary Parties, and to
12 cause the appropriate filing to occur. The Parties further agree and acknowledge that, for purposes
13 of Section 468B of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury
14 Regulations promulgated thereunder, only the DEFENDANTS shall be treated as a "transferor"
15 (within the meaning of such term under Treasury Regulations §1.468B-1(d)(1)) with respect to the
16 Qualified Settlement Fund.

17 27. RELEASED CLAIMS as to each CLASS MEMBER, shall mean any and all
18 claims against RELEASEES that were or could have been pled based on the allegations of the
19 COMPLAINT and the LWDA Notice, including, but not limited to, any claim for: (1) Failure to
20 pay Minimum Wages (including under Lab. Code §§ 201-203, 510, 1182.12, 1194, 1194.2, 1197,
21 1197.1; or any IWC Wage Order); (2) Failure to Pay Overtime Wages (including under Lab. Code
22 §§ 512, 1194, or any IWC Wage Order); (3) Failure to Pay Reporting Time Pay (including under
23 any Wage Order); (4) Failure to Reimburse for Business Expenses (including under Lab. Code §
24 2802); (5) Failure to Provide Meal Periods or Compensation in Lieu Thereof (including under Lab.
25 Code §§ 226.7, 512; or any IWC Wage Order); (6) Failure to Furnish Accurate Wage Statements
26 (including under Lab. Code §§ 226, 226.3, or; any IWC Wage Order); (7) Failure to Timely Pay

1 Wages of Terminated or Resigned Employees (including under Lab. Code, §§ 201-203, 1197,
2 1197.1); (8) alleged violations of Labor Code § 2810.3; (9) Breach of Contract (including under
3 Civil Code § 1559); (10) Violations of the Unfair Competition Law; (11) Failure to pay and record
4 gratuities under Labor Code §§ 351 and 353; (12) Willful misclassification under Labor Code §
5 226.8; (13) Failure to maintain workers' compensation insurance under Labor Code § 2700 *et seq.*;
6 (14) Failure to contribute to the Unemployment Trust Fund under Unemployment Insurance Code
7 § 978; and (15) Claims for penalties for violation of any of the above-cited Labor Code Sections
8 brought pursuant to PAGA (Lab. Code § 2698 *et seq.*); and any other derivative claims, that
9 accrued between August 1, 2015, through January 15, 2016, including claims for statutory or civil
10 penalties, interest, attorneys' fees, LITIGATION and other costs, expenses, restitution, and
11 equitable and declaratory relief, and violations of California Business & Professions Code § 17200
12 *et seq.* In addition, all CLASS MEMBERS who receive and cash or deposit an INDIVIDUAL
13 SETTLEMENT PAYMENT consent to the release of claims that accrued between August 1, 2015
14 and January 15, 2016, that could have been asserted under the FLSA based on the facts alleged in
15 the COMPLAINT, including claims for wages, penalties, liquidated damages, interest, attorneys'
16 fees, costs and equitable relief.

17 28. RELEASEES shall mean any and all of DEFENDANTS' current, former or
18 future affiliates, including, without limitation, parents, subsidiaries, predecessors and related
19 entities, including any of their predecessors, successors, divisions, joint ventures and assigns, and
20 each of these entities' past or present directors, officers, employees, partners, members, employee
21 benefit plan administrators and fiduciaries, principals, agents, insurers, co-insurers, re-insurers,
22 managers, shareholders, attorneys, and personal or legal representatives, in their individual and
23 corporate capacities.

24 29. SETTLEMENT means the terms and conditions set forth in the
25 STIPULATION, as defined herein.

26 30. SETTLEMENT ADMINISTRATOR means the third-party claims
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1 administration firm of Simpluris, Inc. or another administrator mutually agreed to by the Parties by
2 no later than ten (10) business days after PRELIMINARY APPROVAL which shall establish an
3 account which shall be treated at all times as a "qualified settlement fund" within the meaning of
4 Treas. Reg. §1.468B-1, et. seq. (the "QUALIFIED SETTLEMENT FUND" as defined above).
5 References herein to actions and responsibilities of the SETTLEMENT ADMINISTRATOR shall
6 be to those actions and responsibilities it shall take in its position as administrator of the Qualified
7 Settlement Fund.

8 31. SETTLEMENT PAYMENT shall mean the total maximum amount that
9 Defendants shall pay under the terms of this STIPULATION, which is the gross sum of Seven
10 Hundred Twenty Thousand Dollars and Zero Cents (\$720,000.00), and includes, without
11 limitation, all of CLASS COUNSEL's attorneys' fees and costs, Administrative Costs, the
12 Enhancement Awards to the CLASS REPRESENTATIVES, and payment of the PAGA payment
13 to the LWDA.

14 32. STIPULATION means this Stipulation and Settlement Agreement together
15 with all of its attachments and exhibits, which the Parties understand and agree sets forth all
16 material terms and conditions of the SETTLEMENT between them, and which is subject to Court
17 approval. It is understood and agreed that, except with respect to the payment of any
18 Administrative Costs actually incurred, Defendants' obligations for payment under this
19 STIPULATION are conditioned on, *inter alia*, the occurrence of the EFFECTIVE DATE.

20 II. RECITALS

21 A. CLASS REPRESENTATIVES commenced this LITIGATION on October 27,
22 2015, and have amended the Complaint once, on February 2, 2016.

23 B. On November 17, 2015, CLASS REPRESENTATIVES provided notice of their
24 claims to the LWDA, (the "LWDA Notice") pursuant to the requirements of PAGA, Labor Code
25 section 2698, *et seq.* In their notice to the LWDA, CLASS REPRESENTATIVES alleged
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1 DEFENDANTS failed to pay minimum wages for all hours worked, failed to pay overtime for
2 certain hours worked, failed to pay reporting time pay, failed to reimburse necessary business
3 expenses, failed to provide meal periods, failed to furnish accurate itemized wage statements, failed
4 to pay final wages at termination, willfully misclassified delivery drivers as independent
5 contractors, failed to keep accurate payroll records, and failed to pay the full amount of gratuity left
6 by patrons for delivery drivers. As of February 2, 2016, CLASS COUNSEL had received no
7 notification from the LWDA that it intended to investigate the alleged violations. Accordingly,
8 CLASS COUNSEL filed the operative COMPLAINT, amending the original complaint to include
9 PAGA allegations.

10 C. The COMPLAINT sets forth ten (10) causes of action of for: failure to pay
11 minimum wages, failure to pay overtime, failure to pay reporting time pay, failure to reimburse for
12 business expenses, failure to provide meal periods, failure to furnish accurate wage statements,
13 waiting time penalties, breach of contract, violation of the California Business & Professions Code
14 ("Business & Professions Code") sections 17200 et seq., and civil penalties pursuant to the PAGA.
15 Among other things, the COMPLAINT alleges that CLASS REPRESENTATIVES and other
16 similarly situated delivery drivers engaged by SCOOBEEZ beginning in August 2015 to provide
17 deliveries to AMAZON customers were misclassified as independent contractors and were jointly
18 employed by DEFENDANTS. In this regard, SCOOBEEZ reclassified its delivery drivers as
19 employees beginning on or about January 15, 2016.

20 D. Thereafter, AMAZON, SCOOBEEZ and ABT filed answers to the COMPLAINT
21 that generally denied the CLASS REPRESENTATIVES' allegations. DEFENDANTS deny and
22 continue to deny they engaged in any misconduct in connection with the respective wage-and-hour
23 laws, or any other laws regulating any relationship of CLASS REPRESENTATIVES with
24 DEFENDANTS. DEFENDANTS specifically deny that any of them had an employment
25 relationship with the CLASS REPRESENTATIVES during the relevant period.
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1 E. After the filing of this LITIGATION, the PARTIES engaged in informal discovery
2 and exchanged relevant information regarding the merits of the Plaintiffs' claims and damages.
3 Both sides are sufficiently familiar with the facts of this case to assess the claims for settlement
4 purposes.

5 F. On July 15, 2016, the PARTIES attended a full-day mediation session before
6 Michael Dickstein, Esq., a private, independent mediator who has significant experience in
7 mediating wage and hour class actions. The PARTIES did not reach agreement at that time, but
8 those discussions continued with the continued assistance of the mediator and led to this
9 SETTLEMENT. At all times, the PARTIES' negotiations were non-collusive and at arm's length.

10 G. DEFENDANTS deny any liability or wrongdoing of any kind associated with the
11 claims alleged in the COMPLAINT. DEFENDANTS contend that they have complied at all times
12 with the California Business & Professions Code, California Civil Code, California Labor Code
13 and applicable wage orders, as well as any and all other state and federal wage and hour laws, and
14 that the claims alleged in the COMPLAINT are not suitable for class treatment, except in the
15 context of a negotiated settlement. Moreover, DEFENDANTS specifically deny that any of them
16 employed any of the CLASS MEMBERS during the relevant period. Nevertheless,
17 DEFENDANTS have entered into this SETTLEMENT to avoid the cost, risk and inconvenience of
18 further litigation. Nothing contained in this SETTLEMENT, nor the fact of this SETTLEMENT
19 itself, shall be construed or deemed as an admission of liability, or wrongdoing on the part of any
20 of the DEFENDANTS, collectively or individually. Pursuant to California Evidence Code sections
21 1152 and 1154, this SETTLEMENT shall be inadmissible in evidence in any proceeding; except
22 that the SETTLEMENT may be filed and used in this LITIGATION or any related litigation as
23 necessary to approve, interpret, or enforce this SETTLEMENT, or in any subsequent action against
24 or by DEFENDANTS to support a stay of such subsequent action, or to establish a defense of *res*
25 *judicata*, collateral estoppel, release, good faith settlement, judgment bar, or reduction, or any other
26 theory of claim preclusion or issue preclusion or similar defense or counterclaim.

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1 H. All PARTIES, and their counsel, believe that this SETTLEMENT is fair,
2 reasonable, and in the best interest of the CLASS MEMBERS in light of all known facts and
3 circumstances, including the risk of significant delay, defenses asserted to the merits and class
4 certification, and the numerous potential appellate issues.

5 **III. CONDITIONS PRECEDENT TO EFFECTIVENESS OF SETTLEMENT**

6 A. The SETTLEMENT shall be fully effective on the EFFECTIVE DATE.

7 **IV. CLASS CERTIFICATION**

8 A. For SETTLEMENT purposes only, the PARTIES stipulate to conditional class
9 certification of the CLASS.

10 B. The PARTIES further stipulate that Truong, Alkojak, Georgieva, Miller, and Jaff
11 shall be appointed as CLASS REPRESENTATIVES and Leonard Carder, LLP shall be appointed
12 as CLASS COUNSEL.

13 C. The stipulations to certify the above defined CLASS are entirely contingent upon
14 preliminary and final approval of this SETTLEMENT by the Court and are made for settlement
15 purposes only. If the SETTLEMENT is not approved by the Court, is overturned on appeal, or
16 does not become final for any other reason, the PARTIES agree that the certification of the CLASS
17 is void *ab initio* and that, if necessary, they shall stipulate to decertification of the CLASS without
18 prejudice to the propriety of class certification being adjudicated on the merits.

19 D. DEFENDANTS deny all claims as to liability, damages, penalties, interest,
20 attorneys' fees or costs, restitution, injunctive relief and all other forms of relief, as well as the
21 class allegations asserted in the LITIGATION, as that term is defined above. DEFENDANTS have
22 agreed to resolve the LITIGATION via this STIPULATION, but to the extent this STIPULATION
23 is deemed void or the EFFECTIVE DATE does not occur, DEFENDANTS do not waive any
24 procedural or substantive defenses but rather expressly reserve all rights to those defenses to
25 challenge such claims and allegations in the LITIGATION upon all procedural and factual
26 grounds, including, without limitation, the ability to challenge class treatment. Further, the
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1 certification of the CLASS is for settlement purposes and shall not be an admission of, or evidence
2 of the propriety of class claims or class treatment in any other action, brought against any of the
3 DEFENDANTS.

4 **V. SETTLEMENT CONSIDERATION**

5 **A. SETTLEMENT PAYMENT**

6 1. Within five (5) days of the execution by all PARTIES of this
7 SETTLEMENT, SCOOBEEZ will deposit Two Hundred Thousand Dollars and Zero Cents
8 (\$200,000.00) (the "Escrow Payment") into an escrow account controlled by an escrow agent, to be
9 held in trust pursuant to the terms of this SETTLEMENT, and if a PRELIMINARY APPROVAL
10 ORDER is entered, and this the Escrow Payment will be deposited into the QSF as part of the
11 SETTLEMENT PAYMENT in accordance with Section V(A)(2) no later than seven (7) calendar
12 days prior to the date of the FINAL APPROVAL HEARING. Upon deposit of the Escrow
13 Payment into the QSF, the QSF will hold the Escrow Payment in trust pursuant to the terms of this
14 SETTLEMENT. Following the EFFECTIVE DATE, the Escrow Payment will be used for
15 payment as part of the SETTLEMENT PAYMENT as provided in this SETTLEMENT. If for any
16 reason the EFFECTIVE DATE does not occur, the Escrow Payment will be returned to
17 SCOOBEEZ. These instructions concerning the Escrow Payment are irrevocable. SCOOBEEZ
18 will have no property right in the Escrow Payment except for the return of the Escrow Payment as
19 part of the return of the SETTLEMENT PAYMENT to DEFENDANTS if the EFFECTIVE DATE
20 does not occur.

21 2. DEFENDANTS agree to deposit the SETTLEMENT PAYMENT amount of
22 Seven Hundred Twenty Thousand Dollars and Zero Cents (\$720,000.00) to the QSF to settle the
23 LITIGATION by no later than seven (7) calendar days prior to the scheduled date of the FINAL
24 APPROVAL HEARING. The Parties agree that if at least \$600,000.00 is deposited into the QSF
25 by no later than the scheduled date of the FINAL APPROVAL HEARING for distribution to
26 CLASS MEMBERS and CLASS COUNSEL, AMAZON will be released from liability to the
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1 CLASS pursuant to Section V(B)(1) regardless of whether the full settlement sum of \$720,000 is
2 deposited into the QSF *so long as* the Court finally approves the SETTLEMENT terms between
3 the CLASS and AMAZON, resulting in the occurrence of the EFFECTIVE DATE. Any interest
4 accruing on the SETTLEMENT PAYMENT while deposited in the QSF will be distributed to the
5 CLASS MEMBERS and CLASS COUNSEL, provided that the EFFECTIVE DATE occurs. If the
6 EFFECTIVE DATE does not become final, the SETTLEMENT PAYMENT will be returned to
7 DEFENDANTS, along with any accrued interest.

8 3. Mr. Shahan Ohanessian, as an individual ("GUARANTOR"), hereby
9 personally guarantees and promises to pay any amounts needed to reach the total SETTLEMENT
10 PAYMENT amount of \$720,000.00, beyond the \$600,000.00 described in Section X, into the QSF
11 to ensure that there are sufficient funds to make all payment described in Section V(A)(5) of this
12 agreement by the effective date.

13 4. The SETTLEMENT PAYMENT is an all-in common fund, and is non-
14 reversionary, meaning no amount of the SETTLEMENT PAYMENT will be retained by, or revert
15 back to DEFENDANTS.

16 5. The SETTLEMENT PAYMENT shall be used for payment of (1) all
17 payments to CLASS MEMBERS under this SETTLEMENT, (2) any and all ATTORNEYS' FEES
18 and LITIGATION costs approved by the Court associated with representation of the CLASS, (3)
19 ENHANCEMENT AWARDS of up to \$1,500.00 to each of the CLASS REPRESENTATIVES,
20 (4) the fees and costs of the SETTLEMENT ADMINISTRATOR, and (5) \$20,000.00 to resolve
21 the Plaintiffs' claim for PAGA penalties, with \$15,000.00 payable to the LWDA and \$5,000.00
22 payable to the CLASS MEMBERS as part of the NET SETTLEMENT FUND. The
23 SETTLEMENT PAYMENT does not include the employer's share of payroll taxes, if any, in the
24 event any portion of the payments to CLASS MEMBERS is found to be wages by any government
25 taxing authority.

26 6. For tax purposes, 100% of the payments made to CLASS MEMBERS under
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1 this SETTLEMENT shall be treated as non-wage payments that will not be subject to payroll taxes
2 or tax withholding by any DEFENDANT (an IRS Form 1099 will be issued for such payment). It
3 is DEFENDANTS' position that the payments are treated as non-wages because, in their view, the
4 CLASS MEMBERS were properly classified as independent contractors during the relevant period,
5 and the payments include a compromise of claims for business expenses, interest and civil and
6 statutory penalties. Neither DEFENDANTS, DEFENDANTS' counsel, nor CLASS COUNSEL,
7 make any representations, and it is understood and agreed that they have made no representations,
8 as to the taxability to any CLASS MEMBERS of any portions of the SETTLEMENT PAYMENT
9 or other consideration, the payment of any costs or an award of attorneys' fees, or any payments to
10 CLASS REPRESENTATIVES. The PARTIES further understand that the CLASS
11 REPRESENTATIVES and any CLASS MEMBER who receives any SETTLEMENT PAYMENT
12 pursuant to this STIPULATION shall be solely responsible for any and all income tax obligations
13 associated with such receipt, except for the employer's responsibility, if any, for the employer's
14 share of payroll taxes, and any associated penalties and interest, in the event any portion of the
15 payments to CLASS MEMBERS is found to be wages by any government taxing authority. The
16 CLASS REPRESENTATIVES and any CLASS MEMBER who receives any SETTLEMENT
17 PAYMENT should consult with their tax advisors concerning the tax consequences of the
18 SETTLEMENT PAYMENTS they receive under the SETTLEMENT.

19 B. RELEASE BY CLASS MEMBERS

20 1. Upon the EFFECTIVE DATE, and except as to such rights or claims as may
21 be created by this SETTLEMENT, the CLASS REPRESENTATIVES and the CLASS
22 MEMBERS, on behalf of themselves and each of their heirs, representatives, successors, assigns,
23 and attorneys, shall be deemed to have, and by operation of the Judgment shall have, fully, finally,
24 and forever released, dismissed, with prejudice, relinquished, and discharged DEFENDANTS and
25 RELEASEES from any and all RELEASED CLAIMS. It is the express intent of the PARTIES
26 that the release of RELEASED CLAIMS, applies to any claim against the DEFENDANTS, or
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1 other RELEASEES, whether for individual or joint and several liability, for the time period of
2 August 1, 2015 through January 15, 2016.

3 2. The Release provided for in Section V(B)(1), above, shall be effective as to
4 SCOOBEEZ and ABT so long as the full SETTLEMENT PAYMENT of \$720,000.00 is deposited
5 into the QSF by no later than seven (7) calendar days prior to the date of the FINAL APPROVAL
6 HEARING, or GUARANTOR complies with his personal guarantee obligation set forth in Section
7 V such that the full amount of the SETTLEMENT PAYMENT has been deposited into the QSF by
8 no later than the scheduled date of the FINAL APPROVAL HEARING.

9 3. The Release provided for in Section V(B)(1), above, shall be effective as to
10 the AMAZON RELEASEES so long as \$600,000.00 is deposited into the QSF by no later than
11 seven (7) calendar days prior to the date of the FINAL APPROVAL HEARING and so long as the
12 Court grants FINAL APPROVAL of the SETTLEMENT terms.

13 4. If at least \$600,000.00 but less than \$720,000.00 is deposited into the QSF
14 by the date of the FINAL APPROVAL HEARING, the PARTIES shall ask the Court to order a
15 FINAL APPROVAL of judgment as to the AMAZON RELEASEES only. So long as this request
16 is granted by the Court, the amount deposited into the QSF shall be distributed pursuant to Section
17 VIII, and the CLASS REPRESENTATIVES may execute on the personal guarantee to collect the
18 full amount of the SETTLEMENT PAYMENT less the amount deposited into the QSF as of that
19 date and/or shall retain all rights to pursue the LITIGATION against SCOOBEEZ and ABT, and
20 any additional recovery on behalf of CLASS MEMBERS shall be distributed to CLASS
21 MEMBERS consistent with any order or judgment entered by the Court.

22 5. Each CLASS MEMBER who does not opt-out of this action pursuant to
23 Section IX shall be deemed to have released the RELEASED CLAIMS if the SETTLEMENT
24 becomes final.

25 6. All CLASS MEMBERS shall be deemed to have expressly waived and
26 relinquished any and all RELEASED CLAIMS accrued between August 1, 2015, and January 15,

2016, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

7. All CLASS REPRESENTATIVES shall be deemed to have expressly waived and relinquished any and all CLASS REPRESENTATIVES' RELEASED CLAIMS accrued between August 1, 2015, and January 15, 2016, to the fullest extent permitted by law, the provisions, rights, and benefits they may otherwise have had pursuant to Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

8. The above releases given are conditional and shall only take effect unconditionally upon the EFFECTIVE DATE.

C. COURT APPROVAL OF CLASS NOTICE AND SETTLEMENT HEARING.

1. The PARTIES shall file this STIPULATION with the Court and the CLASS REPRESENTATIVES shall move for preliminary approval of this SETTLEMENT. CLASS COUNSEL will prepare and file the preliminary approval motion with the Court, which shall be provided to DEFENDANTS' counsel for review and comment prior to filing. In the motion for preliminary approval, the CLASS REPRESENTATIVES, through their counsel of record, will request the Court to enter the PRELIMINARY APPROVAL ORDER approving the terms of this STIPULATION, certify a class action for settlement purposes only as provided herein, approve the sending of the CLASS NOTICE, and schedule the FINAL APPROVAL HEARING for the

1 purposes of determining the fairness of the SETTLEMENT, whether to grant FINAL APPROVAL
2 of the terms of this STIPULATION and enter Judgment.

3 2. A decision by the Court not to enter the PRELIMINARY APPROVAL
4 ORDER, or to enter the PRELIMINARY APPROVAL ORDER with modifications (other than
5 modifications concerning the proposed amount of any attorneys' fees or costs to be paid to CLASS
6 COUNSEL or the amount of any ENHANCEMENT AWARDS) that any of the PARTIES
7 determines in its reasonable and good faith judgment to be material, will be discretionary grounds
8 for that PARTY to terminate this STIPULATION by providing written notice to the other PARTY
9 and the Court so stating, such notice to be filed within twenty-one (21) calendar days of receipt of
10 the Court's decision. However, before any PARTY can execute this right, the PARTIES must
11 meet and confer and make all reasonable efforts to agree on modifications to the PRELIMINARY
12 APPROVAL ORDER that will result in entry of the PRELIMINARY APPROVAL ORDER by the
13 Court, including seeking assistance from the mediator if needed.

14 3. If any deadlines related to this STIPULATION cannot be met, CLASS
15 COUNSEL and counsel for DEFENDANTS shall confer to reach agreement on any necessary
16 revisions of the deadlines and timetables set forth in this STIPULATION. In the event the
17 PARTIES fail to reach such agreement, any of the PARTIES may apply to the Court via a noticed
18 motion for modification of the dates and deadlines in this STIPULATION, provided that such a
19 request to the Court may seek only reasonable modifications of the dates and deadlines contained
20 in this STIPULATION and no other changes.

21 4. If the Court enters the PRELIMINARY APPROVAL ORDER, then at the
22 resulting FINAL APPROVAL HEARING, the CLASS REPRESENTATIVES and
23 DEFENDANTS, through their counsel of record, shall address any timely written objections, if
24 any, from CLASS MEMBERS who are not OPT-OUTS, and any concerns of the Court, if any, and
25 shall and hereby do, unless provided otherwise in this STIPULATION, stipulate to FINAL
26 APPROVAL of this STIPULATION and entry of the Judgment by the Court.

5. Motion for Final Approval. After the NOTICE RESPONSE DEADLINE and prior to the FINAL APPROVAL HEARING, and consistent with the rules imposed by the Court, the CLASS REPRESENTATIVES shall move the Court for entry of the ORDER OF FINAL APPROVAL along with the associated entry of Judgment. The PARTIES shall make all reasonable efforts to secure entry of the ORDER OF FINAL APPROVAL and the associated entry of Judgment. The PARTIES must meet and confer and make all reasonable efforts to agree on modifications to this STIPULATION that will result in entry of the ORDER OF FINAL APPROVAL by the Court, including seeking assistance by the mediator if needed. If the Court rejects this STIPULATION, fails to enter the ORDER OF FINAL APPROVAL, or fails to enter the Judgment, this STIPULATION shall be void *ab initio*, and DEFENDANTS shall have no obligations to make any payments under this STIPULATION, except for payment of half of the Administrative Costs already incurred by the SETTLEMENT ADMINISTRATOR.

6. Notice to the LWDA. At the same time that CLASS COUNSEL submits this proposed SETTLEMENT to the Court, CLASS COUNSEL shall also provide a copy of the proposed SETTLEMENT to the LWDA.

VI. ATTORNEYS' FEES AND COSTS OF CLASS COUNSEL

A. CLASS COUNSEL will submit an application to the Court for an award of attorneys' fees (the "ATTORNEYS' FEES") of no more than thirty percent (30%) of the total SETTLEMENT PAYMENT, up to Two Hundred Sixteen Thousand Dollars and Zero Cents (\$216,000.00). DEFENDANTS agree that the request is fair and reasonable under the circumstances of this case and, thus, will not oppose CLASS COUNSEL's application. The SETTLEMENT is not conditioned on the Court's award of the final amount of fees or costs requested by CLASS COUNSEL. To the extent the Court does not approve the amount of the ATTORNEYS' FEES or LITIGATION costs sought by CLASS COUNSEL but otherwise approves the SETTLEMENT, the SETTLEMENT shall remain binding except as otherwise provided, and this will not be a justification for the CLASS REPRESENTATIVES or CLASS

1 COUNSEL to withdraw from the SETTLEMENT. Any fee award request that is not approved by
2 the Court shall be included in the NET SETTLEMENT FUND to be distributed to CLASS
3 MEMBERS.

4 **VII. ENHANCEMENT FOR CLASS REPRESENTATIVES**

5 A. CLASS COUNSEL will submit an application to the Court for an
6 ENHANCEMENT AWARD to the CLASS REPRESENTATIVES in the amount of no more than
7 One Thousand Five Hundred Dollars and zero cents (\$1,500.00) each, for assuming the risks
8 associated with this LITIGATION and as consideration for the general release set forth in Section
9 V(B). DEFENDANTS will not oppose CLASS COUNSEL's application. The SETTLEMENT is
10 not conditioned on the Court's award of the full amount of enhancements requested. To the extent
11 the Court does not approve the amount of the ENHANCEMENT AWARDS sought by CLASS
12 COUNSEL but otherwise approves the SETTLEMENT, the SETTLEMENT shall remain binding
13 except as otherwise provided, and this will not be a justification for the CLASS
14 REPRESENTATIVES or CLASS COUNSEL to withdraw from the SETTLEMENT. Any amount
15 not awarded by the Court shall be included in the NET SETTLEMENT FUND to be distributed to
16 CLASS MEMBERS.

17 **VIII. SETTLEMENT ADMINISTRATION**

18 A. The PARTIES mutually agree that Simplurus, Inc., shall serve as the
19 SETTLEMENT ADMINISTRATOR to perform the following: (i) using the data provided by
20 SCOOBEEZ and CLASS COUNSEL, prepare the NOTICE; (ii) mail the NOTICE to CLASS
21 MEMBERS; (iii) send other communications to CLASS MEMBERS as necessary; (iv) notify the
22 PARTIES of timely and untimely requests for exclusions; (v) notify each CLASS MEMBER of his
23 or her estimated INDIVIDUAL SETTLEMENT PAYMENT based on calculations provided to the
24 SETTLEMENT ADMINISTRATOR by CLASS COUNSEL; (vi) notify the PARTIES of and
25 resolve any disputes regarding the calculation of CLASS MEMBERS' INDIVIDUAL
26 SETTLEMENT PAYMENTS; (vii) provide SETTLEMENT PAYMENT CHECKS to CLASS
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1 MEMBERS; (viii) comply with all tax reporting notice and filing requirements; (ix) carry out
2 duties related to the QSF documentation and filing; (x) provide payment to the LWDA as provided
3 for in this STIPULATION, and (xi) provide status reports as needed, among other administrative
4 duties.

5 B. The SETTLEMENT AMOUNT shall be held in a QSF established by the
6 SETTLEMENT ADMINISTRATOR for the administration of the SETTLEMENT. The QSF shall
7 be an interest-bearing escrow account established by the SETTLEMENT ADMINISTRATOR to
8 hold the SETTLEMENT PAYMENT until settlement funds are fully and finally distributed. The
9 QSF is intended to be a Qualified Settlement Fund within the meaning of Internal Revenue Code
10 section 468B and Treasury Regulation section 1.468B-1, and the SETTLEMENT
11 ADMINISTRATOR shall be solely responsible for filing tax returns for the QSF and issuing all
12 required form 1099s. In addition, the SETTLEMENT ADMINISTRATOR, and, as required, any
13 DEFENDANT, will timely make the "relation-back election" (as defined in Treasury Regulation
14 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the
15 procedures and requirements contained in such regulations, provided that DEFENDANTS shall not
16 be required to deposit any monies into the QSF before the time set forth in Section V(A)(1). It will
17 be the responsibility of the SETTLEMENT ADMINISTRATOR to timely and properly prepare
18 and deliver the necessary documentation for signature to all necessary parties, and thereafter cause
19 the appropriate filing to occur. In the event it is determined that the QSF is not a Qualified
20 Settlement Fund within the meaning of Treasury Regulation section 1.468B-1, any tax liabilities
21 associated with such determination shall be satisfied solely from the QSF without any recourse
22 against DEFENDANTS for additional monies.

23 C. The SETTLEMENT ADMINISTRATOR shall hold all funds in trust and shall not
24 disburse any of those funds until after the EFFECTIVE DATE. If the EFFECTIVE DATE does
25 not occur, the SETTLEMENT PAYMENT will be returned to DEFENDANTS.

1 D. Not later than three (3) calendar days following the entry of the order granting
2 PRELIMINARY APPROVAL, SCOOBEEZ shall provide CLASS COUNSEL with a database of
3 all CLASS MEMBERS, including each CLASS MEMBER's name, last known address, and social
4 security number, correlated with the unique identification numbers previously assigned by
5 DEFENDANTS to each CLASS MEMBER. This database shall be based on SCOOBEEZ's
6 business records.

7 E. Not later than ten (10) business days following the entry of the order granting
8 PRELIMINARY APPROVAL, CLASS COUNSEL shall provide the SETTLEMENT
9 ADMINISTRATOR with a spreadsheet that indicates the estimated INDIVIDUAL
10 SETTLEMENT PAYMENT for each CLASS MEMBER along with the information used by
11 Plaintiffs' expert to calculate the CLASS MEMBERS' INDIVIDUAL SETTLEMENT
12 PAYMENTS derived from the DEFENDANTS' business records, including: hours paid and
13 routing data during the period August 1, 2015, through January 15, 2016. The SETTLEMENT
14 ADMINISTRATOR will merge the database of CLASS MEMBERS provided by SCOOBEEZ
15 with the estimated INDIVIDUAL SETTLEMENT PAYMENTS and other information in the
16 spreadsheet described above. DEFENDANTS agree to use the calculations of Plaintiffs' expert
17 solely for the purpose of allocating INDIVIDUAL SETTLEMENT PAYMENTS to CLASS
18 MEMBERS.

19 F. Data pertaining to the CLASS MEMBERS will be provided to the SETTLEMENT
20 ADMINISTRATOR, CLASS COUNSEL and DEFENDANTS' counsel only, and will be kept
21 confidential by the SETTLEMENT ADMINISTRATOR, CLASS COUNSEL, and
22 DEFENDANTS' counsel.

23 G. Within ten (10) business days of receipt of the database, the SETTLEMENT
24 ADMINISTRATOR shall mail to each CLASS MEMBER the CLASS NOTICE approved by the
25 Court in this case, which includes the estimated INDIVIDUAL SETTLEMENT PAYMENT. The
26 NOTICE will be sent to all CLASS MEMBERS in both English and Spanish, with Spanish
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translation provided by the SETTLEMENT ADMINISTRATOR. The English version of the PARTIES' proposed CLASS NOTICE is attached hereto as **Exhibit A**.

H. Upon receipt of returned, undelivered NOTICES without forwarding addresses, the SETTLEMENT ADMINISTRATOR will do additional searches using the CLASS MEMBER's social security number and will use reasonable skip tracing methods to attempt to obtain forwarding addresses to resend CLASS NOTICES to such CLASS MEMBERS. With respect to returned NOTICES, for which one or more new addresses are found, the SETTLEMENT ADMINISTRATOR will re-mail the CLASS NOTICE to such updated addresses within ten (10) calendar days of the receipt of the returned envelope, and if the re-mailed NOTICE is not returned undeliverable that address will be used to mail any INDIVIDUAL SETTLEMENT PAYMENT.

I. If a CLASS MEMBER is deceased, the successor or estate may receive the payment. Within ten (10) calendar days of notification that the CLASS MEMBER is deceased, the SETTLEMENT ADMINISTRATOR shall mail appropriate documentation to the successor or individual acting on behalf of the estate to claim the CLASS MEMBER's proceeds under the SETTLEMENT.

J. CLASS COUNSEL shall provide the Court, at least seven (7) calendar days prior to the FINAL APPROVAL HEARING, a declaration by the SETTLEMENT ADMINISTRATOR specifying the due diligence it has undertaken with regard to the mailing of the NOTICE.

K. If the SETTLEMENT is finally approved by the Court, the SETTLEMENT ADMINISTRATOR shall calculate a NET SETTLEMENT FUND by deducting from the SETTLEMENT PAYMENT the following amounts: ATTORNEYS' FEES and costs awarded by the Court, ENHANCEMENT AWARDS the CLASS REPRESENTATIVES awarded by the Court, the PAGA payment to the LWDA, and the SETTLEMENT ADMINISTRATOR's expenses.

L. The INDIVIDUAL SETTLEMENT PAYMENT for each CLASS MEMBER shall be calculated as a pro rata share of the NET SETTLEMENT FUND based on Plaintiffs' calculations of the total CLASS's number of hours paid and estimated routed miles between

1 August 1, 2015, and January 15, 2016. Each CLASS MEMBER's percentage compared to the total
2 will be multiplied by the NET SETTLEMENT FUND to determine the CLASS MEMBER'S
3 INDIVIDUAL SETTLEMENT PAYMENT.

4 1. Each NOTICE will list the CLASS MEMBER's number of hours paid and
5 estimated routed miles during the relevant period based on Plaintiffs' calculations from the pay
6 records produced by SCOOBEEZ, and routing data produced by AMAZON. To the extent a
7 CLASS MEMBER disputes the calculation stated in his/her NOTICE, the CLASS MEMBER may
8 send to the SETTLEMENT ADMINISTRATOR, within thirty (30) days after the NOTICE is
9 mailed, supporting evidence to demonstrate an alternative calculation and the SETTLEMENT
10 ADMINISTRATOR shall attempt to resolve the dispute with the assistance of the PARTIES'
11 counsel. The CLASS MEMBER cannot exclude himself or herself from the SETTLEMENT to
12 dispute this information. If in fact a CLASS MEMBER timely submits both a request for
13 exclusion from the SETTLEMENT and a letter disputing the information in the NOTICE, the letter
14 will control, and the written request for exclusion shall be null and void.

15 2. The SETTLEMENT ADMINISTRATOR shall report to the PARTIES'
16 counsel, the substance of any dispute between the information provided by the CLASS MEMBER
17 and the calculation set forth in the CLASS NOTICE. If the CLASS MEMBER does not timely
18 submit any supporting evidence to support the dispute and a proposed alternate calculation, the
19 SETTLEMENT ADMINISTRATOR will deny the dispute. Counsel for the PARTIES will meet
20 and confer in good faith in an effort to resolve any supported dispute, and if the PARTIES are
21 unable to reach an agreement, the dispute will be determined by the SETTLEMENT
22 ADMINISTRATOR whose determination will be inclusive and final.

23 3. The SETTLEMENT ADMINISTRATOR will timely notify CLASS
24 MEMBERS whose dispute letters are untimely or denied for other reasons.

25 M. The SETTLEMENT ADMINISTRATOR will issue checks to the CLASS
26 MEMBERS at their last known addresses in two rounds of distribution after the EFFECTIVE
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1 DATE. The first round of checks to all eligible CLASS MEMBERS who do not opt out will be
2 distributed two weeks after the EFFECTIVE DATE. CLASS MEMBERS have 180 days to cash
3 these checks. CLASS MEMBERS who do not cash these checks will still be bound by the terms of
4 this STIPULATION, including the RELEASE. 180 days after the first round of checks are
5 distributed, unclaimed funds resulting from uncashed checks will be paid in a second distribution
6 to the CLASS MEMBERS who cashed their first checks, based on their percentage of the damages
7 calculation compared to the total damages calculation of all CLASS MEMBERS who cashed the
8 first distribution checks. CLASS MEMBERS who receive a second distribution will have 180
9 days to cash these checks. CLASS MEMBERS will not be required to submit claim forms.

10 N. Within ten (10) business days after the EFFECTIVE DATE, the SETTLEMENT
11 ADMINISTRATOR shall calculate each INDIVIDUAL SETTLEMENT PAYMENT and then
12 mail a check for the amount of each INDIVIDUAL SETTLEMENT PAYMENT to each CLASS
13 MEMBER who did not opt out. The back of each check shall state "By endorsing this check, I
14 acknowledge that I read the Settlement Notice and understand that I am releasing claims that
15 accrued between August 1, 2015 and January 15, 2016 as set forth in the Notice" immediately next
16 to the space where the check is to be endorsed by the payee. CLASS MEMBERS who cash or
17 deposit any INDIVIDUAL SETTLEMENT PAYMENTS will also be considered to have opted-in
18 to SETTLEMENT and released his or her FLSA claims that accrued between August 1, 2015 and
19 January 15, 2016, in addition to other RELEASED CLAIMS.

20 O. All checks paid to CLASS MEMBERS shall remain valid and negotiable for one
21 hundred eighty (180) calendar days from the date of their issuance and will thereafter automatically
22 be canceled by the SETTLEMENT ADMINISTRATOR if not cashed within that time. As to the
23 first distribution, the amount of the uncashed checks will be redistributed and will not be paid to
24 the CLASS MEMBERS who did not cash their checks by this deadline. As to the second
25 distribution, the amount of uncashed checks will be deposited to the California unclaimed property
26 fund. If a CLASS MEMBER who did not opt-out of the SETTLEMENT does not cash his or her
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1 first (or if applicable second) distribution check by the deadline, the CLASS MEMBER is still
2 bound by the terms of this STIPULATION including as to the RELEASED CLAIMS described
3 herein.

4 P. The SETTLEMENT ADMINISTRATOR shall pay the ATTORNEYS' FEES, any
5 CLASS REPRESENTATIVE ENHANCEMENT AWARD, PAGA-related payments, and its own
6 expenses within ten (10) business days after the EFFECTIVE DATE.

7 **IX. OBJECTIONS TO AND EXCLUSIONS FROM THE SETTLEMENT**

8 A. Any CLASS MEMBER who wishes to be excluded from the SETTLEMENT (*i.e.*,
9 "opt out") must mail a signed, written request for exclusion ("Exclusion Request") pursuant to the
10 instructions in the NOTICE to the SETTLEMENT ADMINISTRATOR postmarked not later than
11 sixty (60) days following the date of mailing of the NOTICE (except that, for any individual
12 CLASS MEMBER whose NOTICE is returned to the SETTLEMENT ADMINISTRATOR
13 undeliverable and subsequently re-mailed, an additional ten (10) days will be provided for the
14 CLASS MEMBER to submit an Exclusion Request.

15 B. Any OPT-OUT shall receive no settlement benefits under this SETTLEMENT and
16 shall not be bound by the SETTLEMENT, including the RELEASE.

17 C. In the event that ten percent (10%) or more of CLASS MEMBERS become OPT-
18 OUTS, any DEFENDANT shall each have the option to void the SETTLEMENT AGREEMENT
19 within ten (10) business days after receiving notice from the SETTLEMENT ADMINISTRATOR
20 that ten percent (10%) or more of the CLASS has opted out of the SETTLEMENT. If any
21 DEFENDANT exercises its right to void this SETTLEMENT AGREEMENT pursuant to this
22 section, the entire SETTLEMENT is voided and will have no effect, and all amounts deposited for
23 the purpose of paying the SETTLEMENT PAYMENT shall be returned to DEFENDANTS, except
24 that if AMAZON does not exercise this right, AMAZON shall have the option to contribute
25 \$600,000.00 to the QSF and cause the SETTLEMENT, including the release, to be effective as to
26 AMAZON consistent with Section V(B)(3), above.

1 D. The PARTIES and their COUNSEL will not discourage CLASS MEMBERS from
2 participating in this SETTLEMENT, or advise or encourage CLASS MEMBERS to object to or
3 opt out of the SETTLEMENT.

4 E. The SETTLEMENT ADMINISTRATOR shall, with the assistance of CLASS
5 COUNSEL, file a declaration with the Court along with copies of all objections and opt-out forms
6 within ten (10) business days of the deadline for objecting or opting-out.

7 F. CLASS MEMBERS who are not OPT-OUTS will have sixty (60) calendar days
8 from the date of mailing the SETTLEMENT DOCUMENTS within which to file an objection to
9 the SETTLEMENT set forth in this STIPULATION. No OPT-OUTS may file an objection. If a
10 CLASS MEMBER files both an Exclusion Form and an objection, the Exclusion Form will be
11 accepted and the objection will be invalid and will have no effect on the SETTLEMENT. To
12 object, an individual must timely submit a written objection and state any intention to appear at the
13 FINAL APPROVAL HEARING, as set forth in the CLASS NOTICE. The SETTLEMENT
14 ADMINISTRATOR shall supply the written objections and notices of intention to appear to
15 counsel for the PARTIES.

16 **X. PERSONAL GUARANTY**

17 A. GUARANTOR, Shahan Ohanessian, in his individual capacity, hereby personally
18 guarantees and promises to pay any amounts needed to reach the total SETTLEMENT PAYMENT
19 amount of \$720,000.00, if the full amount of the SETTLEMENT PAYMENT has not been
20 deposited into the QSF by no later than seven (7) days prior to the date of FINAL APPROVAL
21 HEARING.

22 B. Guarantor signs this Guaranty in consideration of CLASS REPRESENTATIVES'
23 willingness to enter into this SETTLEMENT with SCOOBEEZ and ABT.

24 C. In the event that the full SETTLEMENT PAYMENT is not deposited into the QSF by
25 the scheduled date of the FINAL APPROVAL HEARING Plaintiffs may execute on the personal
26

1 guarantee to collect the full amount of the SETTLEMENT PAYMENT less the amount deposited
2 into the QSF as of that date.

3
4 D. The obligations undertaken by GUARANTOR pursuant to this Personal Guaranty
5 shall be enforceable in any state or federal court of competent jurisdiction. GUARANTOR agrees
6 to remain fully bound to this obligation until the full amount of the SETTLEMENT SUM provided
7 for in this agreement is fully paid. GUARANTOR further waives demand, presentment and protest
8 and all notices as any condition precedent to enforcement of his personal promise to pay and this
9 personal guaranty. In the event that proceedings are initiated by CLASS COUNSEL for
10 collection, GUARANTOR agrees to pay all reasonable attorney fees and costs of collection.

11 **XI. MISCELLANEOUS PROVISIONS**

12 A. All of the PARTIES have been represented by counsel throughout all negotiations
13 which preceded the execution of this SETTLEMENT, and this SETTLEMENT is made with the
14 consent and advice of counsel.

15 B. The CLASS REPRESENTATIVES, by signing this STIPULATION, are bound by
16 the terms herein and further agree not to request to be excluded from the SETTLEMENT and not
17 to object to any terms of this STIPULATION. Any such request for exclusion or objection shall
18 therefore be void and of no force or effect. DEFENDANTS, CLASS COUNSEL, and the CLASS
19 REPRESENTATIVES waive their rights to file an appeal, writ, or other challenge to the terms of
20 this STIPULATION, except that CLASS REPRESENTATIVES and CLASS COUNSEL have the
21 right to appeal any order denying, in whole or in part, an application for the award of
22 ATTORNEYS' FEES and costs and/or an ENHANCEMENT AWARD.

23 C. This SETTLEMENT may not be modified or amended, except in a writing that is
24 signed by the respective counsel of record for the parties and approved by the Court.

1 D. The PARTIES and their respective counsel shall proceed diligently to prepare and
2 execute all documents, seek all necessary Court approvals, and do all other things reasonably
3 necessary to consummate the SETTLEMENT.

4 E. This SETTLEMENT and the exhibits attached hereto constitute the entire
5 agreement among the PARTIES concerning the subject matter hereof. No extrinsic oral or written
6 representations or terms shall modify, vary, or contradict the terms of the SETTLEMENT.

7 F. This SETTLEMENT shall be subject to, governed by, construed, enforced, and
8 administered in accordance with the laws of the State of California, both in its procedural and
9 substantive aspects, without regard to conflict of law rules and shall be subject to the continuing
10 jurisdiction of the Superior Court of the County of Los Angeles. This SETTLEMENT shall be
11 construed as a whole according to its fair meaning and intent, and not strictly for or against any
12 party, regardless of who drafted or who was principally responsible for drafting this
13 SETTLEMENT or any specific term or condition thereof.

14 G. This SETTLEMENT may be executed in one or more counterparts. Fax signatures
15 shall be deemed as effective as originals.

16 H. In the event that legal action arises out of this SETTLEMENT or is necessary to
17 enforce any of the terms or provisions of this SETTLEMENT, the prevailing party in the action
18 shall be entitled to recover its reasonable attorneys' fees and costs.

19 I. At all times, CLASS COUNSEL agrees that they shall not issue a press release, hold
20 press conferences, contact the media, including, but not limited to, television, radio or newspapers,
21 or otherwise publicize the SETTLEMENT without first obtaining consent from the other
22 PARTIES.

23 J. CLASS COUNSEL represent that they do not currently represent any current or
24 former delivery drivers who provided services to either DEFENDANT in connection with any
25 similar filed or anticipated claims, charges, or complaints.
26

1 K. Each individual signing this SETTLEMENT warrants that he or she is expressly
2 authorized to enter into this SETTLEMENT on behalf of the PARTY for which that individual
3 signs.

4 L. All PARTIES agree to maintain the confidentiality of any confidential documents
5 produced, formally or informally, during the course of this LITIGATION.

6 M. This SETTLEMENT shall be binding and shall inure to the benefit of the PARTIES
7 and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

8 IN WITNESS WHEREOF, the undersigned have executed this SETTLEMENT as of the
9 date indicated below:

10
11
12
13 Dated: January __, 2017

14 _____
15 TAREE TRUONG
16 Plaintiff/Class Representative

17 Dated: January __, 2017

18 _____
19 KHALED ALKOJAK
20 Plaintiff/Class Representative

21 Dated: January __, 2017

22 _____
23 OLGA GEORGIEVA
24 Plaintiff/Class Representative

25 Dated: January __, 2017

26 _____
27 CYNTHIA MILLER
28 Plaintiff/Class Representative

1 K. Each individual signing this SETTLEMENT warrants that he or she is expressly
2 authorized to enter into this SETTLEMENT on behalf of the PARTY for which that individual
3 signs.

4 L. All PARTIES agree to maintain the confidentiality of any confidential documents
5 produced, formally or informally, during the course of this LITIGATION.


6 M. This SETTLEMENT shall be binding and shall inure to the benefit of the PARTIES
7 and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

8 IN WITNESS WHEREOF, the undersigned have executed this SETTLEMENT as of the
9 date indicated below:
10

11
12
13 Dated: 2/7/ January 2017

14 
15 TAREE TRUONG
16 Plaintiff/Class Representative

17 Dated: 2/7/ January 2017

18 
19 KHALED ALKOJAK
20 Plaintiff/Class Representative

21 Dated: January 2017

22 OLGA GEORGIEVA
23 Plaintiff/Class Representative

24 Dated: January 2017

25 CYNTHIA MILLER
26 Plaintiff/Class Representative

1 K. Each individual signing this SETTLEMENT warrants that he or she is expressly
2 authorized to enter into this SETTLEMENT on behalf of the PARTY for which that individual
3 signs.

4 L. All PARTIES agree to maintain the confidentiality of any confidential documents
5 produced, formally or informally, during the course of this LITIGATION.

6 M. This SETTLEMENT shall be binding and shall inure to the benefit of the PARTIES
7 and their respective successors, assigns, executors, administrators, heirs, and legal representatives.

8 IN WITNESS WHEREOF, the undersigned have executed this SETTLEMENT as of the
9 date indicated below:
10

11
12
13 Dated: January __, 2017

14 _____
15 TAREE TRUONG
16 Plaintiff/Class Representative

17 Dated: January __, 2017

18 _____
19 KHALED ALKOJAK
20 Plaintiff/Class Representative

21 Dated: January __, 2017


22 _____
23 OLGA GEORGIEVA
24 Plaintiff/Class Representative

25 Dated: January 2/10/, 2017

26 _____
27 CYNTHIA MILLER
28 Plaintiff/Class Representative

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Dated January 2, 2017




ROBERT J. JAFF
Plaintiff in Class Representation

Dated January 2, 2017

SCOOBERZ, INC. and AHT HOLDINGS, INC.

By: 
Nathan O. Schwartz, in his capacity as the
CEO of SCOOBERZ and AHT Holdings, Inc.

Dated January 2, 2017

By: 
Nathan O. Schwartz, in his capacity as the
CEO of SCOOBERZ and AHT Holdings, Inc.

Dated January 2, 2017


AMAZON.COM, INC.

By: _____

APPROVED AS TO FORM:

Dated January 2, 2017

LEONARD CARRIER, LLP

By: 
Beth A. Ross, Esq.
Attorney for Plaintiff and the Plaintiff Class

STIPULATED TO CLASS ACTION SETTLEMENT

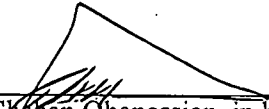
FILE NO. 17-10001

1
2 Dated: January __, 2017


3 REBWAR JAFF
4 Plaintiff/Class Representative

5
6 Dated: January __, 2017

7 **SCOOBEEZ, INC. and ABT HOLDINGS, INC.**

8 By: 
9 Shahan Ohanessian, in his capacity as the
10 CEO of SCOOBEEZ and ABT Holdings, Inc.

11
12 Dated: January __, 2017

13 By: 
14 Shahan Ohanessian, Guarantor, in his individual
15 capacity

16
17 Dated: January __, 2017

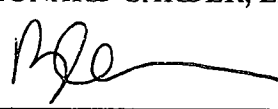
18 **AMAZON.COM, INC.**

19 By: _____
20 _____
21 _____

22 **APPROVED AS TO FORM:**

23 *February 14,*
24 Dated: ~~January~~ __, 2017

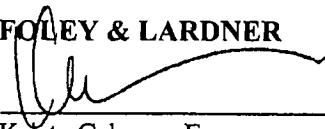
25 **LEONARD CARDER, LLP**

26 By: 
27 Beth A. Ross, Esq.
28 *Attorneys for Plaintiffs and the Putative Class*

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Dated: January __, 2017

FOLEY & LARDNER

By: 

Krista Cabrera, Esq.
*Attorneys for Defendants Scoobeez, Inc.,
and ABT Holdings, Inc.*

Dated: January __, 2017

MORGAN, LEWIS & BOCKIUS LLP

By: _____
John Battenfeld, Esq.
Attorneys for Defendant AMAZON.COM, inc.

02452017

1
2 Dated: January __, 2017

FOLEY & LARDNER

3 By: _____
4 Krista Cabrera, Esq.
5 *Attorneys for Defendants Scoobeez, Inc.,*
6 *and ABT Holdings, Inc.*

7 February 14,
8 Dated: ~~January~~ __, 2017

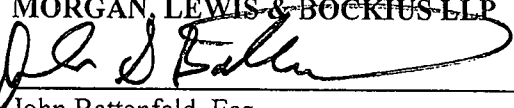
9 MORGAN, LEWIS & BOCKIUS LLP
10 By:  _____
11 John Battenfeld, Esq.
12 *Attorneys for Defendant AMAZON.COM, Inc.*

EXHIBIT A

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8.

NOTICE OF SCOOBEEZ DELIVERY DRIVERS CLASS ACTION SETTLEMENT

If you were a Delivery Driver with Scoobeez, Inc., delivering packages for Amazon Prime Now in California between August 1, 2015, and January 15, 2016, a class action may affect your rights.

Truong, et. al. v. Amazon.com, Inc., Scoobeez, Inc., et al., Case No. BC 598993

Superior Court of California, Los Angeles County

A state court authorized this notice. This is not a solicitation from a lawyer.

- A settlement of a lawsuit against Amazon.com, Inc., Scoobeez, Inc., and ABT Holdings, Inc. (collectively, "Defendants") has been proposed in which Defendants will pay to resolve claims brought by Plaintiffs on behalf of certain delivery drivers with Scoobeez for Amazon Prime Now that accrued between August 1, 2015 and January 15, 2016, alleging that Defendants misclassified them as independent contractors.
- You may be eligible to receive a share of the settlement fund.
- Defendants and Plaintiffs agreed to a class action settlement that *affects your rights whether you act or don't act*. Defendants will pay \$720,000 to resolve claims that accrued between August 1, 2015 and January 15, 2016. Your estimated settlement share, and how it's calculated is described in this notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

These rights and options – **and the deadlines to exercise them** – are explained in this notice.

DO NOTHING	Receive Money. If you do nothing, you will receive a payment as described in this notice.
OPT OUT	You may opt-out of the settlement and pursue your own lawsuit concerning the same allegations.
OBJECT	Write to the Court about why you don't like the settlement.
GO TO A HEARING	Ask to speak in Court about the fairness of the settlement.

- The Court in charge of this case still has to decide whether or not to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved.
- **Please read this entire notice carefully.**

BASIC INFORMATION

1. Why did I get this notice?

You received this notice because Scoobeez's records show that you contracted with Scoobeez to deliver packages for Amazon Prime Now in California between August 1, 2015, and January 15, 2016.

This notice summarizes the proposed settlement. To review the settlement agreement and other documents, visit [\[INSERT WEBSITE\]](#). For more information, you may also contact class counsel (see Question 12).

2. What is this lawsuit about?

This lawsuit was filed by Plaintiffs Taree Truong, Khaled Alkojak, Olga Georgieva, Cynthia Miller, and Rebwar Jaff ("Plaintiffs") on or about October 27, 2015, in Los Angeles County Superior Court, Case No. BC 598993 ("the lawsuit").

The lawsuit is about whether Defendants misclassified drivers who delivered Amazon Prime Now packages under contracts with Scoobeez as "independent contractors" rather than as employees between August 1, 2015 and January 15, 2016, and failed to provide them with legal rights that employees have under California law. In the operative Complaint, Plaintiffs allege that Defendants willfully misclassified the drivers as independent contractors, failed to pay minimum wage and overtime compensation, failed to pay reporting time pay, failed to reimburse necessary business expenses, failed to provide meal periods, failed to furnish accurate itemized wage statements, failed to pay final wages at termination, failed to keep accurate payroll records, and failed to pay the full amount of gratuity left by patrons for delivery drivers. The lawsuit also alleges a claim for breach of contract for failure to pay the full amount of gratuity, as well as alleging violation of the California Business & Professions Code sections 17200 *et seq.* and civil penalties pursuant to the Private Attorneys General Act ("PAGA"), Labor Code section 2698 *et seq.*

Defendants deny that the drivers were employees and maintain that the independent contractor classification was and is appropriate and deny that they broke any laws. This lawsuit only relates to the time period between August 1, 2015, and January 15, 2016, when Scoobeez's Amazon Prime Now delivery drivers were classified as independent contractors in California.

3. Why is there a class action settlement?

In a class action lawsuit, the Plaintiffs sue on behalf of other people who have similar claims. The people who have similar claims to or with the Plaintiffs are "Class Members." The individuals who sued and all the Class Members like them are collectively called the "Class." The Court has conditionally certified this Class for the purposes of the settlement.

The Court has not made any decisions on the merits of the lawsuit. Instead of further litigation, which could have taken many years with no certainty of outcome, both sides agreed to a class-wide settlement. The settlement provides Class Members with compensation sooner and allows both sides to avoid the cost of a trial and further appeals. Plaintiffs and their lawyers think that the settlement is in the best interest of the Class Members.

4. How do I know if I am part of the settlement?

You are part of the settlement if you were engaged by Scoobeez as an independent contractor to deliver packages in California for Amazon Prime Now between August 1, 2015 and January 15, 2016.

5. Are there exceptions to being included?

If you choose to opt-out of the settlement, you will not be included in the settlement or receive any payment from the settlement fund (see Questions 14-15).

THE SETTLEMENT BENEFITS

6. What does the proposed settlement provide?

Defendants have agreed to create a \$720,000 Class Settlement Fund to resolve the claims of Class Members accrued between August 1, 2015 and January 15, 2016. The money will also be used to pay administration costs, Plaintiffs' attorneys' fees and costs, the Labor and Workforce Development Agency, and to pay the named Plaintiffs' service enhancement awards for their initiation and prosecution of the lawsuit. All aspects of the settlement are subject to Court approval.

The parties have agreed that settlement checks will be mailed to all Class Members if the settlement is finally approved and appeals, if any, are resolved. The funds will be distributed through a qualified settlement fund ("QSF") and [redacted] will act as the settlement administrator.

7. How much will my settlement payment be? And how was it calculated?

After the deductions of the Court-approved fees and costs, LWDA payment and service enhancement awards from the Class Settlement Fund, the remaining sum ("Net Settlement Fund") is estimated to be \$[redacted]. Each class member will be sent his or her pro-rata share of the Net Settlement Fund based on calculations that account for the number of hours for which they were paid and aggregate estimated mileage based on routing data for deliveries they made between August 1, 2015, and January 15, 2016. This information is derived from records provided by Defendants, and the calculations were done by Class Counsel and Class Counsel's retained expert.

Calculations derived from Defendants' records indicate that, between August 1, 2015, and January 15, 2016, you:

- Were paid for a total of approximately [redacted] hours; and
- Were assigned deliveries covering approximately [redacted] routed miles.

Based on the settlement distribution formula, your *estimated* settlement payment under the terms of the settlement will be: \$[redacted].

Your settlement share may be higher or lower depending on a number of factors. The exact amount you will receive cannot be finally calculated at this time because we do not yet know the number of class members who will participate in the settlement and the Court has not yet approved the amounts that will be deducted from the settlement fund, which include Plaintiffs' Counsel's application for attorneys' fees and expenses, and service enhancement awards to the Plaintiffs who brought this lawsuit.

8. Will I owe any taxes?

You will receive an IRS Form 1099 for the amount you are sent. You should consult with an accountant or other tax advisor about the tax consequences of your settlement proceeds.

9. What am I giving up to get payment?

Under the terms of the settlement, you will be releasing Defendants, and their current, former, or future affiliates including parents, subsidiaries, predecessors and related entities, including any of their predecessors, successors, divisions, joint ventures and assigns,

and each of these entities' past or present directors, officers, employees, partners, members, employee benefit plan administrators and fiduciaries, principals, agents, insurers, co-insurers, re-insurers, managers, shareholders, attorneys, and personal or legal representatives, in their individual and corporate capacities, from any and all claims asserted in the lawsuit (the First Amended Complaint on file) and the LWDA Notice, or that could have been brought in the lawsuit, which include, but are not limited to, any claim for: (1) Failure to pay Minimum Wages (including under Lab. Code §§ 201-203, 510, 1182.12, 1194, 1194.2, 1197, 1197.1; or any IWC Wage Order); (2) Failure to Pay Overtime Wages (including under Lab. Code §§ 512, 1194, or any IWC Wage Order); (3) Failure to Pay Reporting Time Pay (including under any Wage Order); (4) Failure to Reimburse for Business Expenses (including under Lab. Code § 2802); (5) Failure to Provide Meal Periods or Compensation in Lieu Thereof (including under Lab. Code §§ 226.7, 512; or any IWC Wage Order); (6) Failure to Furnish Accurate Wage Statements (including under Lab. Code §§ 226, 226.3, or any IWC Wage Order); (7) Failure to Timely Pay Wages of Terminated or Resigned Employees (including under Lab. Code, §§ 201-203, 1197, 1197.1); (8) alleged violations of Labor Code § 2810.3; (9) Breach of Contract (including under Civil Code § 1559); (10) Violations of the Unfair Competition Law; (11) Failure to pay and record gratuities under Labor Code §§ 351 and 353; (12) Willful misclassification under Labor Code § 226.8; (13) Failure to maintain workers' compensation insurance under Labor Code § 2700 *et seq.*; (14) Failure to contribute to the Unemployment Trust Fund under Unemployment Insurance Code § 978; and (15) Claims for penalties for violation of any of the above-cited Labor Code Sections brought pursuant to PAGA (Lab. Code § 2698 *et seq.*); and any other derivative claims, that accrued between August 1, 2015, through January 15, 2016, including claims for statutory or civil penalties, interest, attorneys' fees, litigation and other costs, expenses, restitution, and equitable and declaratory relief, and violations of California Business & Professions Code § 17200 *et seq.* In addition, if you receive and cash or deposit your individual settlement payment, you consent to the release of claims that accrued between August 1, 2015, and January 15, 2016 that could have been asserted under the Fair Labor Standards Act ("FLSA") based on the facts alleged in the complaint, including claims for wages, penalties, liquidated damages, interest, attorneys' fees, costs and equitable relief.

The proposed settlement does not release any claims that accrued after January 15, 2016.

If the Court approves the Settlement, your claims described above will be extinguished unless you have asked to exclude yourself (see Questions 14-15).

HOW TO GET A PAYMENT – DO NOTHING

10. How will I receive my payment?

There will be two rounds for distribution of the settlement fund. If the settlement is finally approved and the time for appeals has expired, a settlement check will be mailed directly to you representing your settlement share. You must cash the check within 180 days. If you cash this check, you may receive a second check reflecting your pro rata share of unclaimed settlement proceeds from the first distribution. After the second round distribution, any uncashed checks will be sent to the California Unclaimed Property fund.

11. When would I get my payment?

The Court will conduct a Final Fairness Determination Hearing on [REDACTED], to decide whether to approve the settlement. You should receive your payment within a few months if the Court approves the settlement. However, payment will be delayed if there are appeals.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The Court has appointed the following lawyers to serve as Class Counsel for the Plaintiffs and Class Members for the purposes of this settlement:

Beth A. Ross
Elizabeth Gropman
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Tel: (510) 272-0169
Fax: (510) 272-0174

These lawyers will be paid from the settlement fund, so you will not be charged personally for their work on the case and in negotiating this settlement.

13. How will the lawyers and the named Plaintiffs be paid?

Class Counsel will request approval from the Court for payment of (a) up to 30% of the Settlement Fund for attorneys' fees and expenses to compensate the attorneys for their hours of time and out-of-pocket expenses investigating the facts, litigating the case, and negotiating this settlement and (b) \$1,500 each in service awards for the five (5) named Plaintiffs for their efforts in pursuing this lawsuit, as well as their willingness to accept the risks of being a class representative. Both requests are subject to Court approval.

Class Counsel will make their requests to the Court for attorneys' fees and expenses, as well as Plaintiffs' service-enhancement awards, on or before [REDACTED]. These requests will be available on [INSERT] or you can request a copy by contacting the Settlement Administrator. Payment of the attorneys' fees and expenses will be made out of the Settlement Fund and you will not be required to pay any other fees and expenses.

OPTING-OUT OR OBJECTING TO THE SETTLEMENT

14. What does it mean to opt-out or object to the settlement?

Opt Out: You have the right to opt out – ask to be excluded – from the settlement and pursue your own lawsuit concerning allegations set forth in Plaintiffs' operative complaint if you choose. If you opt out, you will not receive any payment from the settlement fund and you will not have released your claims described above in Question 9. This means your only remedy is to pursue other remedies on your own, separate and apart from this settlement.

Object: If you are a Class Member and do not opt-out, you can object to the settlement if you don't think it is fair, reasonable, or adequate. You can give reasons why you think the Court should not approve it. You may hire a lawyer to represent you at your own expense. The Court will consider your views. If the Court does not agree with your objection and the settlement is approved, you will still receive your settlement payment and be bound by the terms of the settlement.

You cannot both opt-out *and* object. You can do one or the other, or neither.

15. How do I tell the Court that I would like to opt-out or object?

To opt-out, you must mail a signed, written request for exclusion from the settlement to the Settlement Administrator. Requests for exclusion must be postmarked to Settlement Administrator no later than [REDACTED] [60 days from date of mailing Notice].

To object, you must send a letter to the Court and parties that includes:

- The name of this proceeding (*Truong, et. al. v. Amazon.com, Inc., Scoobeez, Inc., et al.*, Case No. BC 598993);
- Your full name, address, and phone number;
- A written statement that:
 - You are objecting to the settlement, as well as the specific reason(s), if any, for each objection, including any legal or factual support you wish to bring to the Court's attention;
 - Any evidence or other information you wish to introduce in support of your objection; and
 - A statement of whether you or your counsel intends to appear and argue at the Final Fairness Determination Hearing.

File with the Clerk of the Court, and mail or fax to counsel the objection, postmarked no later than [REDACTED]:

Clerk of Court

[INSERT]

Class Counsel

Beth Ross
Elizabeth Gropman
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Tel: (510) 272-0169
Fax: (510) 272-0174

Counsel for Scoobeez

Krista Cabrera
FOLEY & LARDNER, LLP
3579 Valley Centre Drive,
Suite 300
San Diego, CA 92130
Tel: (858) 847-6700
Fax: (858) 792-6773

Counsel for Amazon

John Battenfeld
MORGAN, LEWIS &
BOCKIUS LLP
300 South Grand Ave., 22nd
Floor
Los Angeles, CA 90071-3132
Tel: (213) 612-2500
Fax: (213) 612-2501

THE COURT'S FINAL FAIRNESS DETERMINATION HEARING

16. When and where will the Court decide whether to approve the settlement?

The Court will hold a Final Fairness Determination Hearing on [REDACTED], before Judge John Shepard Wiley, of the Superior Court of California, Los Angeles County, located at Central Civil West Courthouse, 600 South Commonwealth Ave., Los Angeles, CA, 90005.

At the Final Fairness Determination Hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will listen to Class Members who appear at the hearing, either in person or telephonically, who have filed a notice of intention to appear by [REDACTED]. The Court may also decide how much Class Counsel will receive as attorneys' fees and costs and whether to award service payments to Class Members. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

17. Do I have to attend the hearing?

No. Class Counsel will answer questions the Court may have. You are welcome, however, to come at your own expenses, or attend via telephone. If you submit a written objection, you do not have to come to the Court to talk about it; it will be considered so long as you submitted the objection on time. You may also pay your own lawyer to attend if you wish.

18. May I speak at the hearing?

You may ask the Court for permission to speak at the Final Fairness Determination Hearing. To do so, you must send a letter stating your "Notice of Intention to Appear at Fairness Hearing in *Truong, et. al. v. Amazon.com, Inc., Scoobeez, Inc., et al.*, Case No. BC 598993." Be sure to include your name, address, telephone number, and your signature. Your notice of intention must be postmarked no later than [REDACTED], and must be sent to the Clerk of the Court, Class Counsel, and Counsel for Scoobeez and Amazon at the addresses in Question 15.

ADDITIONAL INFORMATION

This notice summarizes the proposed settlement. Additional details are included in the written Class Action Settlement Agreement. You can get a copy of that Agreement by writing to the Settlement Administrator, [REDACTED] at [INSERT ADDRESS], or by visiting the Settlement Administrator's website at [INSERT WEBSITE].

You may also speak to class counsel, who are:

Beth A. Ross
Elizabeth Gropman
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Tel: (510) 272-0169
Fax: (510) 272-0174

Please note that it is your responsibility to keep a current address on file with the settlement administrator to ensure that you receive your payment should the Court grant final approval of the settlement agreement.

DO NOT CONTACT THE COURT OR DEFENDANTS WITH QUESTIONS.

DATE: [MONTH-00], 2017

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EXHIBIT 2

Lodestar by Task and Timekeeper, through February 10, 2017

Task Code	Hours	Lodestar
Client and Class Interviews; Client Communication	58	\$ 34,912.50
Background Fact Investigation	49.5	\$ 19,912.50
Development of Legal Theories and Legal Research	26.25	\$ 12,206.25
Case Management	27	\$ 18,000.00
Court Appearances	10.75	\$ 8,858.75
Informal Discovery	67	\$ 34,350.00
Formal Written Discovery	15.75	\$ 9,281.25
Pleadings	50.75	\$ 25,781.25
Mediation Preparation and Mediation	141.75	\$ 79,400.00
Expert Discovery and Damage Modeling	25.25	\$ 16,331.25
Settlement Documents	37.75	\$ 21,018.75
Preliminary Approval	15	\$ 9,750.00
Total		\$ 289,812.50

Time Keeper	Hourly Rate	Hours	Lodestar
Beth A. Ross (Partner)	\$ 825.00	201	\$ 165,826.00
Elizabeth Gropman (Associate)	\$ 375.00	328.75	\$ 123,281.00
Total		529.75	\$ 289,107.00

Litigation Expenses, through February 10, 2017

Expense Category	Amount
Case Anywhere	\$ 362.80
Photocopies	\$ 198.25
Court Call	\$ 86.00
Damage Expert	\$ 8,690.00
Filing Fees	\$ 1,547.45
Mediator Fee	\$ 10,046.00
One Legal (Filing and Service)	\$ 833.20
PACER	\$ 30.10
Postage	\$ 26.88
Travel	\$ 2,415.37
Westlaw	\$ 537.60
<i>Total Current Expenses</i>	<i>\$ 24,773.65</i>
Anticipated Damage Expert	\$ 4,000.00
Anticipated Travel	\$ 1,500.00
<i>Total Anticipated Expenses</i>	<i>\$ 5,500.00</i>
Total	\$ 30,273.65